Commission of Inquiry re Ontario Provincial Police

The Honourable
Mr. Justice Campbell Grant

COMMISSION OF INQUIRY RE ONTARIO PROVINCIAL POLICE

ONTARIO

INQUIRY RE ALLEGED
IMPROPER RELATIONSHIPS
BETWEEN PERSONNEL OF

THE ONTARIO PROVINCIAL POLICE FORCE AND PERSONS OF KNOWN CRIMINAL ACTIVITY

UNDER
THE PUBLIC INQUIRIES ACT
BY LETTERS PATENT
DATED 28TH JULY, 1970

COMMISSIONER
THE HONOURABLE
MR. JUSTICE CAMPBELL GRANT

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[Seal]

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE CAMPBELL GRANT, A Justice of Our Supreme Court of Ontario,

GREETING:

WHEREAS in and by Chapter 323 of The Revised Statutes of Ontario, 1960, entitled "The Public Inquiries Act" it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good Government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission, appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the Commissioner or Commissioners deem requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned:

NOW KNOW YE that We, having and reposing full trust and confidence in you the said the Honourable Campbell Grant, DO HEREBY APPOINT you to be Our Commissioner to inquire into and report upon any improper relationships between personnel of the Ontario Provincial Police Force and any person or persons of known criminal activity and more particularly any such relationships as alleged by the Member of the Legislature for High Park in his speech of June 4th, 1970 between personnel of the Ontario Provincial Police Force and George Clinton Duke, Daniel Gasbarrini, John Papalia and Donald Le Barre and to report thereon and to make such recommendations to Our Prime Minister and Executive Council as you Our Commissioner may deem fit.

AND WE DO CONFER on you, Our said Commissioner, the power of summoning any person and requiring him to give evidence on oath and

to produce such documents and things as you Our said Commissioner deem requisite to the full examination of the matters into which you are appointed to examine.

AND WE DO HEREBY ORDER that all Government Departments, Boards, Agencies and Committees shall assist you Our said Commissioner to the fullest extent in order that you may carry out your duties and functions, and that you shall have authority to engage such counsel, research and other staff and technical advisers as you Our said Commissioner may deem proper at rates of remuneration and reimbursement to be approved by Treasury Board.

TO HAVE, HOLD, AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: THE HONOURABLE WILLIAM ROSS MACDONALD, A Member of Our Privy Council for Canada, Upon whom has been conferred Our Canadian Forces Decoration, A Colonel in Our Canadian Armed Forces Supplementary Reserve and One of Our Counsel Learned in the Law, Doctor of Laws,

LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO at Our City of Toronto in Our said Province this twenty-eighth day of July in the year of Our Lord one thousand nine hundred and seventy and in the nineteenth year of Our Reign.

BY COMMAND

Robert Welch

PROVINCIAL SECRETARY
AND MINISTER OF CITIZENSHIP

To His Honour,
The Lieutenant Governor of Ontario,

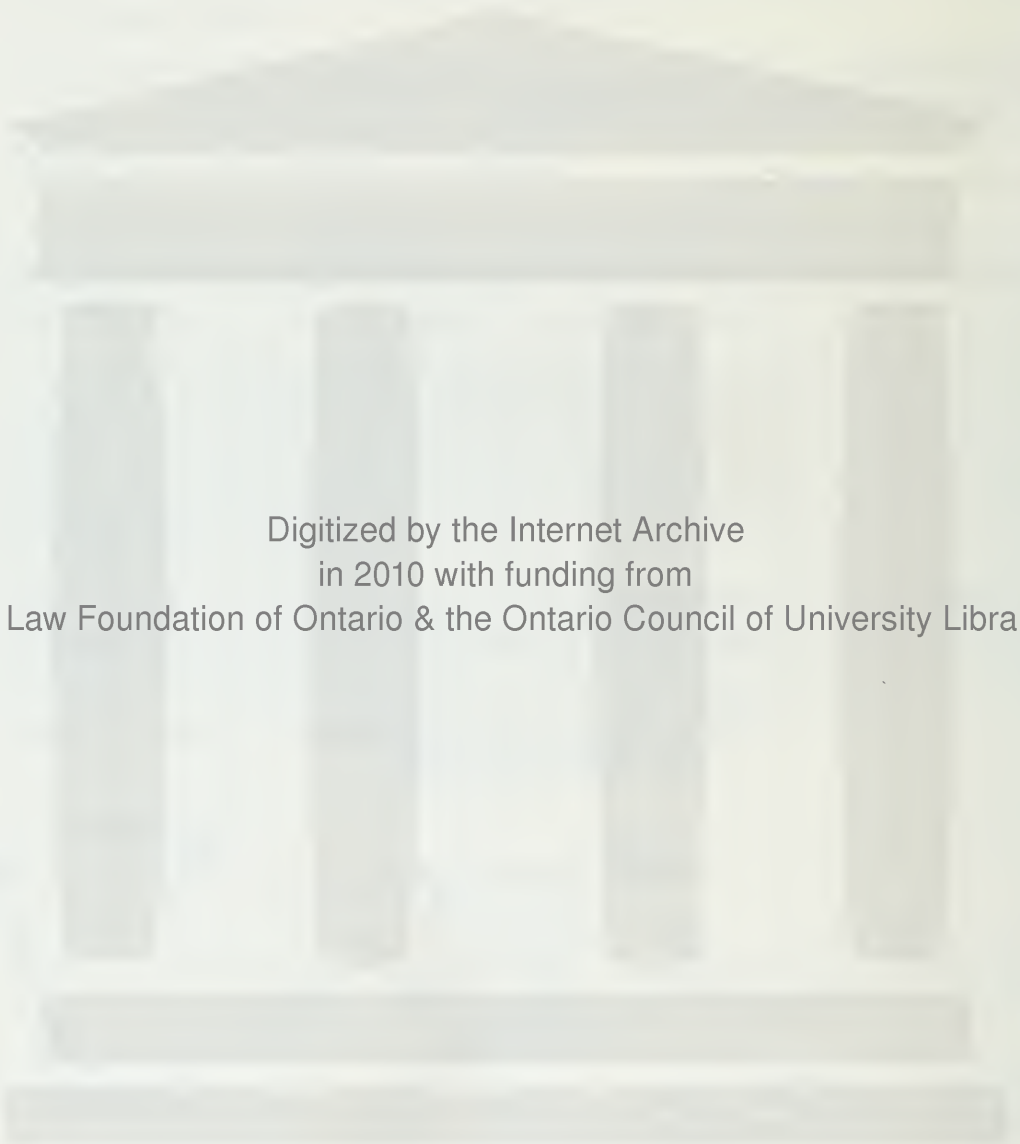
May It Please Your Honour,

I, the undersigned, Campbell Grant, one of Her Majesty's Justices of the Supreme Court of Ontario, appointed Commissioner by Order-in-Council OC-2361/70 pursuant to the provisions of The Public Inquiries Act, R.S.O. 1960, c. 323, and approved by your Honour on the 28th day of July, A.D. 1970, to inquire into and report upon any improper relationships between personnel of the Ontario Provincial Police Force and any person or persons of known criminal activity and more particularly any such relationships as alleged by the Member of the Legislature for High Park in his speech of June 4th, 1970, between personnel of the Ontario Provincial Police Force and George Clinton Duke, Daniel Gasbarrini, John Papalia and Donald Le Barre:

Beg to Submit to your Honour
The Following Report.

Campbell Grant J.

15th December, 1970 Commissioner



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INTRODUCTION

Pursuant to such commission I appointed John J. Robinette, Q.C. senior counsel and Marvin A. Catzman as assistant counsel. Such solicitors immediately commenced preparation for the hearings by interviewing witnesses and causing extensive investigation to be made for the purpose of ascertaining the truth in regard to the matters to be enquired into and reported upon. Suitable accommodation for such hearings was secured in what was formerly Court Room Number 38 in the Old City Hall in the City of Toronto. Due publicity was given as to the time and place where such inquiry was to be held. It opened at such premises on Monday, September 14th and continued to October 13th, 1970.

For a thorough investigation of the matters which formed the subject of this inquiry and an appreciable understanding of the events in connection therewith one must have knowledge of the character of the various parties whose conduct and testimony is to be considered herein. It is with regret that I shall have to speak disparagingly of some and in other cases to expose unhappy situations which but for the necessity of this inquiry might have remained hidden in the seclusion of the private lives of the parties concerned. To relate the facts unaccompanied by such information would be to tell only part of the story and fail to justify many of the assumptions and findings herein made. To some the result is deserving because their conduct has been the initial cause of this inquiry but to others who were innocent of wrongdoing it may prove a source of deep embarrassment. To those against whom unwarranted accusations have been made and whose reputation have been tarnished by unfounded rumour this report may prove to be some source of gratification.

A judge should not be engaged in any undertaking which requires him to be associated with or make findings or decisions relative to political issues. Judges are however expressly authorized by section 38 of The Judges' Act to function as "commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or inquiry" if appointed thereto

by order-in-council of the Governor in Council or the Lieutenant Governor in Council of the Province. Some authorities however are of opinion that a member of the judiciary should never be appointed to act as a commissioner in an inquiry under The Public Inquiries Act. Because the terms of reference set out in the commission relate to allegations contained in a speech made by a member of the Legislature in the House I satisfied myself before undertaking my task herein that I would not thereby be involved in the solution of any political issue. It appeared to me that I would be called upon only to inquire into and report upon the conduct of personnel of the Ontario Provincial Police Force. At the outset of the inquiry I requested all parties involved to assist in keeping the hearing free of any political controversy. I am pleased that all counsel participating complied fully with such requisition and saved me from any embarrassment in that regard. I am particularly grateful to such members of the Bar therefor. As I will refer to some of the parties involved on many occasions, for the purpose of brevity only I may after their initial introduction hereafter refer to them by their surnames only.

RELEVANT PORTIONS OF DR. SHULMAN'S SPEECH OF JUNE 4th, 1970, IN THE LEGISLATURE

The terms of reference require me to inquire into and report firstly upon any improper relations between personnel of the Ontario Provincial Police Force and any person or persons of known criminal activity and, secondly, more particularly any such relationships as alleged by the Member of the Legislature for High Park in his speech of June 4th, 1970, between personnel of the Ontario Provincial Police Force and George Clinton Duke, Daniel Gasbarrini, John Papalia and Donald Le Barre. Because such speech contains references which are not allegations of the nature to be inquired into I prepared an extract therefrom embodying what I thought were all the accusations therein contained. I gave a copy thereof to Dr. Shulman so that he might consider it and approve of it if he found it to contain the allegations. The same is in the following form:

> "The specific case that I want to discuss at some length today, because it does involve the Mafia, is a case that has been discussed in the House at some length before but without this particular aspect being known, and that is the Clinton Duke case. Just to refresh the memory of everyone, Clinton Duke is a wealthy contractor who lives in Burlington; he was charged with pointing a gun at his next-door neighbour. This case came into the Legislature because of charges that Mr. Duke received special treatment by officials of the Attorney General's department and that he received special treatment because of his special connection with certain senior officials of the OPP.
>
> Basically, the objections were that the case was heard in the privacy of family court. When he arrived for the court hearing, the contractor was allowed to wait in the judge's chambers, and after he admitted his guilt he was simply ordered to keep the peace and his gun licence was lifted for six months.
>
> . . . .
>
> Mr. Duke has a record, and I have not mentioned that point up to now; the only reason I am mentioning it now is because it bears with

what follows. The record is an old record, it goes back a long, long time; by itself it means nothing and that is the reason I have not mentioned it before because I was not aware of his present relationships.

But the record, which may have some bearing in the light of the whole situation, is as follows: In 1929, Mr. Duke was tried in Hamilton on a charge of armed robbery with violence. The case was dismissed after a county court jury refused to accept the testimony of a convicted bank robber who claimed Duke was with him when a Canadian Bank of Commerce was robbed of $23,000.

Duke was arrested on the Hamilton charge after he had been released from the Erie county jail in Buffalo where he served six months for carrying a concealed weapon. It was on February 9, 1929, that Duke was arrested on the weapons charge and at that time he was living in Buffalo. He was sentenced on February 14, to a six-months term which allowed Hamilton police time to start extradition procedures against him.

On his release from Erie county jail, he was taken into custody and extradited to Hamilton to face the robbery charge, and it was on September 19 that this case was dismissed.

FBI records show that on January 5, 1929, Duke was arrested at 2.30 a.m. at Main and Allan Street. At the time he was carrying a loaded pistol. He was held for Toronto police on information listing him as wanted in connection with an attempted murder. Records reveal the information was sent out by Toronto police following an armed robbery.

Toward the end of 1929, Duke was arrested and charged following a jewel theft in Snyder, New York. Both police records and newspaper clippings revealed that Duke had a gang of nine bandits who raided a dinner party of 18 New York notables. While the notables were held at gunpoint, the gang stripped them of gems valued at $400,000, one being a necklace valued at $235,000. The necklace was never recovered, although some gems were found when the Duke gang was placed under arrest.

Duke stood trial for the gem theft and he was identified as the leader of the gang. He received a 30-year-to-life term in Auburn prison. However, in 1942 he was deported to Canada.

. . . .

The enforcer for the Mafia in Canada is one Johnny Papalia. And Johnny Papalia, and his bodyguard Red Lebar, has attended several garden parties at Clinton Duke's home – this is recently. And just to explain who Johnny Papalia is, he was in charge of the heroin branch of the Mafia for many years.

In 1963 Papalia was convicted in New York for his part in a conspiracy to smuggle $150 million worth of heroin into the United States over a 10-year period. He was sentenced to 10 years in jail and served five years of this sentence when he was released in January, 1968. It is since that time that he has been a guest at Clinton Duke's

home. The same day he has been a guest there, there have been senior OPP officials present and I will be naming certain of these later.

Mr. Duke's relationship with Papalia is not just that he has had him as a guest in his home. Mr. Clinton Duke has an alias – the same alias he used many years ago, Clinton Jones – and under that name, he maintains an apartment at the present time together with Johnny Papalia at 255 Bold Street in Hamilton; the apartment number is 607. Their names are not on the door, but a man was sent this morning to the apartment house and he asked the superintendent for Clinton Jones. "Nobody here by that name." "This was what I was told by Mr. Jones; I could meet him here. I met him at a party last week and he said I should come here." "Well, that is different, go up to apartment 607, but we are not to give out that information."

The address is 255 Bold Street in Hamilton. This morning I thought it might be interesting to find out who owns 255 Bold Street in Hamilton. We checked, and 255 Bold Street in Hamilton is owned by Terrace Creek Development Company Limited, whose address is 115 Main Street East in Hamilton.

Earlier this afternoon, I went over to the companies branch to find out who was Terrace Creek Developments Limited. Terrace Creek Developments Limited is a company that has three directors. The president is Daniel Gasbarrini, 749 King Road, Burlington. The other two directors are Mr. Gasbarrini's wife and a Muriel Palermo, who is the wife of a man who works for Gasbarrini.

Gasbarrini is a keypin in the Mafia in this country. I have considerable information about Gasbarrini here. He was first named at the U.S. Senate crime investigations subcommittee hearing in 1963. At that time he was named as a Canadian Mafiosi, a member of the Sicilian secret society that has control of organized crime throughout the world. He was also cited in the Ontario Police Commission hearings in 1964 as being a suspected member of the Cosa Nostra.

To give you an idea, I do not wish to draw any conclusions, however, from this information, but there is an obvious conclusion which is a frightening one to me. In October, 1945, Gasbarrini was charged with receiving stolen bonds. The case began with the arrest of a Hamilton man, Paul Donat, who tried to cash one of the stolen bonds at a Hamilton bank. Donat told police he did not realize the bonds were stolen and he agreed to give evidence against Gasbarrini who was charged with receiving these bonds. On the day of Gasbarrini's trial Donat failed to show up so the charge against Gasbarrini was dismissed. Donat has never been seen since.

At the U.S. Senate committee hearings in 1963, two Buffalo policemen listed Gasbarrini with seven other Canadians, including Johnny Papalia, as smugglers and suppliers of narcotics in the Canadian arm of the Buffalo Mafia organization headed by Stephano Magadeno. The next year the Ontario Police Commission hearings point out that Gasbarrini and Papalia, who went to school together in Hamilton, operated an illicit gambling club at 15½ John Street North. The two acquired a club charter from Timmins and opened the Porcupine

Miners Club in Hamilton, but the club licence was revoked in November, 1958, when a Hamilton police investigation revealed the illegal gambling.

In summing up its findings on Hamilton crime, the commission said: "There is no doubt that Tony Silvestro, that is Gasbarrini's father-in-law, Danny Gasbarrini and the Papalia family, have brought prominence to Hamilton insofar as criminal activities are concerned."

I confirmed all this. I called Sheriff Mike Amico of the Erie county sheriff's office and he put me through to Frank Latchford of the Federal Bureau of Naturalization who confirmed all these matters to me.

I might also mention that on September 4, 1963, *Maclean's* had an article about this man who said he was one of Canada's leading dope agents.

Now, Clinton Duke, in addition to his relationships with Papalia and, I presume, Gasbarrini, has quite close relationships with senior officials of the Ontario Provincial Police.

To begin with, Commissioner Eric Silk has attended parties in Mr. Duke's home. In fact, on December 11, 1968, two provincial police officers were shot and killed in Peterborough. And on the day of the funeral, Eric Silk and Superintendent Al Wilson of the provincial police both attended a party at Clinton Duke's home. The same day, by coincidence, although I cannot be sure it was the same time, Johnny Papalia visited Duke's home. Prior to Superintendent Wilson being transferred to Burlington, he was an officer in London; Duke requested at that time that Wilson be transferred from London to Burlington. Whether or not it was a result of Duke's request I have no way of knowing, but Wilson was transferred from London to Burlington. Duke subsequently boasted that it was because of his influence; but this may have been a boast – nothing more.

Other provincial police officers have attended at Duke's home. Superintendent I. R. Robbie on March 30, 1968, was struck by an auto on the North Service Road at Oakville following a party at Duke's home where considerable alcohol was consumed.

The relationship of Duke with Superintendent Wilson is a close one. When Superintendent Wilson had his son's wedding, Clinton Duke flew from Nassau to attend the wedding. Clinton Duke boasts of his relationship with the OPP; he wears an OPP tiepin; he sponsored the OPP ball team in the area last year. When he applied for a licence to carry a gun, he applied to the local chief of police who refused him permission to have a licence. Duke then went to the OPP and an official of the OPP gave him the licence. Or authorized the licence, I should say; arranged the licence.

. . . .

Mrs. Citron and Superintendent Archie Rogers of the OPP have a common friend. I have her name here. I have been asked not to use it. If a royal commission or a public hearing is ordered on this matter, I will reveal it at that time. At the moment this lady prefers her name not be used.

She was approached by Superintendent Rogers and asked to call Mrs. Citron and arrange a meeting with him, and he passed the message on – I want to get it as correctly as I can – passed the message on that Mrs. Citron was doing the wrong thing in pursuing this, and he wanted to see her to discuss it. So through this intermediary, there were several calls back and forth. Mrs. Citron said she would meet him in her house; this was after receiving advice to have the house bugged. Superintendent Rogers did not wish to meet her in her home, and he said he would only meet here elsewhere, so the meeting did not take place. Mrs. Citron has heard nothing more since that time.

. . . .

I think the important thing in this case is that Duke has made serious allegations that he has influence in the OPP – that he has succeeded in making friends with officials of the OPP. He unquestionably has close relationship with persons high up in the Mafia, and I think, in view of his boasts and suggestions, that this matter must be explored deeply.

. . . .

Mr. Chairman: I will call the meeting to order. Mr. Shulman?

Mr. M. Shulman (High Park): Mr. Chairman, on a point of order, I mis-stated one thing; just to keep the record absolutely straight. In relation to Superintendent Robbie's death, it was at the wedding of Wilson's daughter, not his son, and the wedding was at The Holiday Inn. It was attended by Robbie and Duke, and it was following this that the fatal accident occurred.

. . . .

Second, well, before I go on to the second point, the very fact that he received what is obviously very special treatment, and the very fact that he alleged, before he received this special treatment, that he was going to get special treatment because of his connections with the OPP, seemed to be reason enough, if for no other reason whatsoever than to prove the truth, or the lack of truth of this, to have an inquiry to determine whether anyone did contact crown attorney Latimer.

. . . .

The second matter in which there is a definite allegation is that the Attorney General has said today that his department has known for some length of time that Clinton Duke has been associating with Papalia and these other Mafia people. I find it extremely upsetting that while this was known to the Attorney General's department, senior police officials from the OPP would be visiting – and I say visiting; it was not a visit as far as the commissioner was concerned. Perhaps they only met twice, as was described – I accept his word without hesitation, the words of Mr. Dick. But certainly other senior police officers were there numbers of times.

I find it even more disturbing that after this case broke in the paper, a superintendent of the provincial police saw fit to phone Mrs. Citron – or rather saw fit, through intermediaries, to phone Mrs. Citron to make certain approaches for a private meeting to get this thing settled privately"

By letter September 28th, 1970, Dr. Shulman wrote to me saying in part:

> "During the Debate in the estimates on my allegations I did make some further allegations which I believe you should consider. These are contained in Volume S.36 of the Legislature Debates and are printed below:
>
> 'Mr. Shulman: I am informed that he was involved in a lengthy series of car accidents and apparently no charges came of any of them and I am curious as to why not.'
>
> 'Mr. Shulman: I am informed further and this comes back to something that we discussed yesterday, and I am seeking corroboration because this is just a matter of being informed – that in one car accident some 11 years ago charges were laid but were withdrawn by the O.P.P. before the case came to court. Is that correct?' "

For the purpose of clarification I agree that these paragraphs should be added to the earlier synopsis I have made although matters therein are being considered and evidence has been given in relation to them. In such letter, however, Dr. Shulman also sets forth certain other parts of his remarks in the Legislature on the day in question but I do not propose to include them in this summary because they are not allegations levelled against the Ontario Provincial Police personnel or any police officers in Ontario but take on the nature of political criticism only.

OBJECTIONS TO THE LEGALITY OF THE COMMISSION

Counsel for George C. Duke, at the opening of the Inquiry, challenged the validity of such Commission. His submission was that there was no authority in the Lieutenant Governor in Council to pass the Order-in-Council dated July 28th, 1970, authorizing the issue of such Commission because section 40 of The Police Act established a special law for regulating inquiries into the conduct of police officers and that under section 1 of The Public Inquiries Act the right to direct a commission was confined to those cases where the inquiry was not regulated by any special law. I was therefore requested to state a case to the Court of Appeal in the following form:

> "Are the provisions of sections 40 and 48 of The Police Act, R.S.O. 1960, Chapter 298, such a 'special law', as referred to in section 1 of The Public Inquiries Act as to render invalid the Commission issued by Order-in-Council on July 28th, 1970?"

Section 1 of The Public Inquiries Act, R.S.O. 1960, c. 323, reads as follows:

> "1. Whenever the Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by commission, appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deem requisite for the full investigation of the matters into which he or they are appointed to examine."

Section 40 of The Police Act, R.S.O. 1960, c. 298, reads as follows:

> "40. (1) There shall be a Commissioner of the Ontario Provincial Police Force who shall be appointed by the Lieutenant Governor in Council.
>
> (2) Subject to the direction of the Ontario Police Commission as approved by the Attorney General, the Commissioner has the general control and administration of the Ontario Provincial Police Force and the employees connected therewith.
>
> (3) The Commission, the Commissioner or a deputy commissioner may hold an inquiry into the conduct of any member of the Ontario Provincial Police Force or of any employee connected therewith and upon such inquiry it or he has and may exercise all the powers and authority that may be conferred upon a person appointed under *The Public Inquiries Act*."

It was conceded that section 48 of The Police Act did not refer to such an inquiry but rather one into the conduct of local police officers.

I declined to state such a case. My reasons for so doing were as follows:

(a) In my opinion the words in section 1 of The Public Inquiries Act, "and such inquiry is not regulated by any special law" refers back to and is descriptive of the form of inquiry directed by the Lieutenant Governor in Council. It means that when there is no special law in any statute regulating or directing the form the inquiry is to take then the Lieutenant Governor in Council may appoint one or more persons to conduct such inquiry. If there exists some special law regulating the manner in which an inquiry directed by the Lieutenant Governor in Council is to be carried on, then the practice therein set forth must be followed rather than by the appointment of one or more persons as authorized in such section 1. An example of such an inquiry is contained in section 4 of The Provincial Courts Act, s.o. 1968, c. 103, where the Lieutenant Governor in Council may cause an inquiry to be instituted and conducted into alleged misdemeanours by a provincial judge. That section provides such inquiry must be conducted by a judge of the Supreme Court. Section 40(3) of The Police Act does not purport in any manner to regulate an inquiry which is directed by the Lieutenant Governor in Council but rather the right to hold the inquiry is given by the statute itself. The effect of adherence to the submissions made by Duke's counsel would be that the Lieutenant Governor in Council had no power to direct such an inquiry and it would necessarily be held under section 48a. of such Act by the Police Commission;

(b) The inquiry provided by section 48(1) of The Police Act is where the matter to be investigated is the conduct of a specific named member of the Ontario Provincial Police Force. It is entirely permissive. The commission, commissioner or deputy commissioner is not obliged to proceed thereon. It would not be an appropriate form to inquire into a situation where as in

the present case the subject of the investigation is improper relationship between personnel of this force and other persons of known criminal activity. The inquiry contemplated by The Public Inquiries Act is much broader and encompassing than that provided by section 40 of The Police Act.

Such counsel thereupon indicated his instructions were to apply to the Court of Appeal under section 5 of The Public Inquiries Act for an order compelling me to state such case and requested me to refrain from proceeding with the inquiry until the Court of Appeal had ruled on the matter. As many witnesses were present for the hearing I decided to proceed therewith until directed by the Court of Appeal to state such a case. On the appeal counsel for Duke stated that he was not pressing the application as set forth in such question but that he wished to alter the reference to sections 40 and 48 of The Police Act to section 48a. thereof which reads as follows:

> "48a. (1) The Lieutenant Governor in Council may direct the Commission to inquire into and report to him upon any matter relating to,
> (a) the extent, investigation or control of crime; or
> (b) the enforcement of law,
> and he shall define the scope of the inquiry in the direction."

This latter section was introduced into the Act in the year 1964. The Court of Appeal did not consider such amended question for the reason that the inquiry thereby propounded was not before me as commissioner nor considered by me and was not embraced in the order refusing to state a case as requested. There could be no appeal until the commissioner had been given the opportunity to consider whether he should state a case. There had been no refusal to refer such a stated case so there was no basis for appeal. Even if the applicant had been successful on such motion it would not have ended an inquiry. It would simply have meant that the same should be conducted by the commission, the commissioner or deputy commissioner. No further application was made to me to state a case as to whether the provisions of such section 48a. amounted to a "regulation by any special law" and thereby required such an inquiry to be made pursuant to the provisions of such section 48a. It may be that such is the undesigned effect of this additional provision and if hereafter it be contemplated that such an inquiry be made other than by the provisions of section 48 that an amendment to section 1 of The Public Inquiries Act should be considered.

HEARSAY TESTIMONY

In commission hearings hearsay evidence may be received. The extent to which it is useful depends on its nature, source and the circumstances surrounding its origin. The generally accepted definition thereof is as follows:

> "Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made." *Subramanian v. Public Prosecuor*, [1956] 1 W.L.R. 965 at 970. (P.C.).

The soundest objection to hearsay testimony is that usually it is not susceptible of being tested by cross-examination of the declarant and usually not made under oath. The risk of incorrect transmission is high. In the present hearing many of the problems to be investigated were first heard of in the form of statements by persons who could not verify as to their truth but were purportedly only repeating what someone else said. An example of this is Mrs. Citron's testimony to the effect that Mrs. Duke had told her about the alleged use of the Duke Bahamas appartment or the company's hotel suite rented in Montreal being used by police officers without expense to themselves. Such evidence was admitted not as proof that such premises were so used but rather the admissions served to fix one of the objects of the investigation. In most cases where hearsay was admitted herein, the person who was alleged to have made the statement was one who would have had knowledge of the truth or falsity of the allegation. These statements were part of the allegations of impropriety on the part of officers which were to be investigated to ascertain their truth or falsity. The admissions helped to clarify the issue and direct its course. It also assisted in identifying the source thereof. When the origin of a rumour

has been definitely traced one can then determine if there was bias or ill will associated with its first utterance. In this hearing Mrs. Citron was the second witness. A great part of her testimony related to matters which she said had been told to her. A great portion of the public reading a newspaper account thereof would accept the same as direct evidence of the matter and many persons may have formed very bad opinions of the persons referred to therein. First impressions often become the lasting recollection. Subsequent testimony tending to clear the name of the person slandered thereby may not come to the eyes of all the readers of the first instance. Because of this I have attempted to deal with all these matters as fully as possible.

The person relating the hearsay may by his very repetition thereof provide an opportunity for analysis of his own integrity but then it is not the testimony offered that proves the point but rather the conduct of the speaker. While hearsay evidence that would not be admitted in a trial may be heard in an inquiry of this nature it should not be received as proof of the facts thereby related.

DEVELOPMENT OF DUKE LAWN EQUIPMENT LIMITED

George Clinton Duke was born on the 31st day of December, 1905, near Belleville. At 5 years of age he came to Toronto where he remained until 1919. He did not complete his high school education having continued only to his third year. He then went to Europe for twelve months and returned to work in Toronto and thereafter at Hamilton. In 1925 under the name of G. Jones he was convicted of theft and sentenced to three months definite and nine months indefinite in the Industrial Farm at Burwash. In 1929 a charge of robbery with violence against him was dismissed at Hamilton. On January 20th, 1930, he was convicted at Buffalo, New York, of robbery in the first degree and sentenced to a term of thirty years to life. Such conviction described him as alias Clinton Jones, alias George Jones, alias Harry Radcliffe, alias Arthur Graham and alias Red Duke. On his release from penitentiary in Buffalo in 1942 he was deported from the United States to Canada as he was a Canadian citizen. He then went to work for Otis-Fenson in the Beaufors Gun department as a secretary or shorthand reporter. When that operation was closed in 1945 he moved to Burlington and became sales and service manager in a company which manufactured lawn mowers.

He married his present wife Marguerite Helen Duke, commonly referred to herein as "Bonnie Duke" in the same year. They had known each other from their school days. He informed her of his conviction and imprisonment before such marriage. They were both then 39 years of age. She had been a widow with two children from her former marriage, namely, Richard Duke and Mrs. Sharon B. Dredge, who both came into the home with their mother and who are still actively employed in the business. Such son whose father's name was Nolan has legally taken the name of his stepfather.

The company for which Duke had been working failed in business in 1948 and he then accepted some lawn mowers on account of such company's indebtedness to him and in the following year started in the business of sale and servicing of lawn mowers on the present business site in Burlington. Mrs. Duke was his chartered accountant. From the commencement of this business she took a very active part therein and contributed materially to its development and success. In later years both children have worked and are now associated therewith. From this meagre start the business developed so that the Dukes became the national representatives of certain lawn mowers and other ground maintenance equipment for some lines with exclusive selling rights across Canada. As to some equipment their exclusive rights were limited to Ontario. As to some of the products they acted only as agents but in most cases they purchased the product outright from the manufacturers in England, Switzerland and Italy but mostly in the United States. The business involved sales of equipment to all types of customers. Duke sold domestic equipment to dealers all over Canada as well as to distributors. The product which they sold consisted of various types of equipment which the small gardener might need or the home owner might buy or which municipalities would have need of as well as provincial and federal governments, fire departments, landscape contractors and sod growers. The business enterprise developed so extensively that it was decided to incorporate a private Ontario company to take it over. For that purpose Duke Lawn Equipment Limited was incorporated on April 15th, 1955. The incorporating shareholders and first directors were George Clinton Duke, his wife and one George M. Lang who was a solicitor in the office of the incorporating officials and was given one share to make up the necessary three shareholders. The objects of the company were to engage in the business of agricultural implements and lawn machinery agents; and to export, import, buy, sell, lease, manufacture, repair and deal in all types of farm machinery and lawn machinery and agricultural implements of all kinds. The authorized capital of the company was 4,500 preference shares with a par value of $10.00 each non-cumulative preferential dividends 5% p.a. non-participating and 30,000 common shares without par value. The head office was in the Township of Nelson.

On June 30th, 1955, such limited company purchased with the exception of the building, the net assets of the predecessor proprietorship of G. C. Duke which carried on business under the name of Duke Lawn Equipment Company. The sales price was $50,210.05 with the consideration as follows:

10,000 common shares at 10¢ each	$ 1,000.00
Demand note without interest	49,210.05
	$ 50,210.05

The value of the assets purchased and liabilities assumed was as follows:

Bank balance	13,367.37
Accounts receivable	61,751.74
Inventory	20,823.73
Equipment and Motor Vehicles	13,785.58
	$109,728.42
Less: Accounts payable and accrued expenses	59,518.37
	$ 50,210.05

After the purchase of the proprietorship assets the shareholders were:

George Clinton Duke	10,001 common shares
Marguerite Duke	1 common share
Gordon M. Lang	1 common share
H. P. Wright (a partner in the audit firm of Wright, Erickson, Lee and Company)	1 common share
	10,004 common shares

No preference shares were issued at this time. The officers of the company were:

George Clinton Duke	President and Director
H. P. Wright	Vice-President and Director
Marguerite Helen Duke	Secretary-Treasurer and Director

In each of the fiscal years from June 30th, 1956, to December 31st, 1958, the audited financial statements reflect a profit. On January 15th, 1959, the supplementary Letters Patent were granted which redivided the authorized capital into 45,000 preference shares with a par value of $1.00 each, 30,000 common shares without par value. The minutes of the Directors' Meeting of October 16th, 1959, show that G. C. Duke subscribed for 10,500 preference shares for which he paid $10,500.00. The minutes of the Directors' Meeting on October 19th, 1959, approved the transfer of 10,001 common shares from George Clinton Duke to Richard Nolan (Duke). The auditors advise that this was an estate planning move by which they attempted to freeze the value of Mr. Duke's estate. Mr. Duke took down the 10,500 preference holding shares to ensure him of effective control. The company continued to operate profitably in the fiscal years ended December 31st, 1959 and 1960. In 1960 and each year thereafter dividends were paid on the preference and common shares at the rate of 5¢ and 20¢ respectively.

On August 8th, 1961, the records of the company for the period July 1st, 1955 to December 31st, 1960, were seized by the Hamilton office of the Department of National Revenue. It was alleged that excessive vouchers had been entered in the company's disbursements. No charges were laid and the affair was settled in 1965 with the payment of the additional taxes and penalties assessed against the corporation and individuals in the approximate amounts of $29,000.00 and $17,000.00. I mention this matter only to show that in our investigation of this company's affairs for the purpose of ascertaining the source of the funds which form the capital of the company, we had the benefit of such investigations by Income Tax authorities from the Department of National Revenue as well as the check made by our auditors engaged by this commission.

During the fiscal years ending 31st December, 1961 to December 31st, 1968, the corporation continued to grow and operate profitably. In April 1968 Duke Lawn Equipment purchased from G. C. Duke the land and buildings which the business occupied in Burlington. The consideration was 191,000 preference shares of the par value of $1.00.

The company was granted supplementary Letters Patent on March 18th, 1968, which created an additional 300,000 preference shares of the par value of $1.00. The value of the assets arrived at by real estate appraisers was:

Land	$ 45,240.00
Office	40,500.00
Warehouse No. 1	76,192.00
Warehouse No. 2	22,020.00
Cottage	5,948.00
Garage	1,100.00
	$191,000.00

80,000 of these shares were redeemed during 1968 for cash. The sale of these assets was another estate planning consideration which was recommended by the company's auditors.

In May 1969 the company suffered fire damage in the respective amounts of $213,390.00 and $92,284.00 for loss of inventory and loss of profit. The claim for loss of profit is pending. Power Turf Equipment Limited has a loss of profits claim in the amount of $12,532.00 pending. This claim resulted from the same fire. 80,000 preference shares were redeemed for cash in 1969. The company at present is still held at December 31st, 1969, as follows:

George Clinton Duke, President	41,500 preference shares
Richard Nolan (Duke), Vice-President	10,003 common shares
Marguerite Helen Duke	1 common share
Sharon Dredge	1 common share

It developed the company was representing principals who were offering competing products in the market. This resulted in the Duke company failing to lend full effort to the sale of each competitor's machines and the possibility of losing some lines of those. For the purpose of retaining all agencies Mrs. Duke decided to form a separate company to take over some of the sales that were proving conflicting. For this purpose Power Turf Equipment Limited was incorporated as a private Ontario company on April 28th, 1967. The incorporating shareholders and first directors were Marguerite Helen Duke, Arthur Robert Douglas and James Redman. The objects set forth in the charter were as follows: To engage in the business of agricultural implements and lawn machinery agents; and to export, import, buy, sell, lease, manufacture, repair and deal in all types of farm machinery, lawn machinery and agricultural implements of all kinds.

The authorized capital was 3,000 5% cumulative, non-voting, non-participating preference shares with a par value of $10.00 each redeemable at par and 1,000 common shares with a par value of $10.00 each. The head office was at Burlington on the same premises as the other company. On May 15th, 1967, Power Turf Equipment Limited commenced operations. After commencement the shareholders were:

Marguerite Helen Duke	101 common shares
Arthur Robert Douglas	1 common share
James Redman	1 common share

The officers of the company who have held office since inception are:

Marguerite Helen Duke	President and Director
Arthur Robert Douglas	Vice-President and Director
James Redman	Secretary-Treasurer and Director

In each of the fiscal years December 31st, 1967 to 1969 the company has operated at a profit. No dividends have been paid. Mrs. Duke still continues to work in the Duke Lawn Equipment Company but has a separate staff to operate her own company. The business of the latter company is much less than that of the Duke Lawn Equipment Company. The firm of Wright, Erickson, Lee & Company of Hamilton have been the auditors for both companies from the time of their respective inception to the present time. They are a reputable firm of auditors. For the purpose of ascertaining as to whether any funds had come into either of such businesses from sources of an illegal nature and as to whether there were any transactions which appeared to be other than those of a legitimate business operation, this commission engaged the firm of Touche, Ross & Co., Chartered Accountants, to take an overview of the financial affairs of such two companies. Mr. Brian William McLoughlin of that firm gave testimony. He stated that he reviewed the working papers of the audit firm of Wright, Erickson, Lee & Company from the inception of both companies.

The period covered with regard to Duke Lawn Equipment Limited was for the fiscal year ended June 30th, 1956 to the fiscal year ended December 31st, 1969. Power Turf Equipment Limited files were reviewed for the fiscal year ended December 31st, 1967 to December 31st, 1969. These files include the balance sheet working papers, interim audit working papers, reference files, tax files and other sundry files. He discussed the financial affairs of both companies with two of the partners of the companies' audit firm. In all of the years from the inception of both companies to the fiscal year ended December 31st, 1969, this firm gave a clear statement of opinion on the financial statements. He reviewed also generally the books of account and other records of Duke Lawn Equipment Limited for the fiscal years ended December 31st, 1961 to December 31st, 1969. Books and records prior to this date had been disposed of after clearance was received from the Department of National Revenue in December, 1966. There was nothing unusual in this. All the records of Power Turf Equipment Limited were available and he generally reviewed these for the years ended December 31st, 1967 to 1969. He toured the premises and observed the staff at their duties. He was satisfied that the financial affairs reviewed by him of both companies indicated nothing other than normal business operations. He found no suspicious or undue injections of capital into the business at any time and the growth and development of both companies arose out of their respective profits.

DUKE'S DRIVING EXPERIENCE

The first charge of a criminal nature disclosed in police records subsequent to Duke's return to Canada was an impaired driving charge heard by Magistrate Kenneth Langdon, as he then was, on January 15th, 1958. Duke gave evidence at the trial to the effect he had taken evasive action to avoid a collision in which his motor vehicle was involved and damaged. He said because of stress he had consumed liquor between the time of the impact and the arrival of the investigating police officer. This negatived the effect of their testimony as to his condition when found by them. I took it from the testimony that his motor vehicle was not capable of operation in the meantime. The magistrate dismissed this charge. He also dismissed a charge of having liquor illegally in the motor vehicle because he considered it double jeopardy arising out of the same incident. Magistrate Langdon was not approached by anyone on Duke's behalf but tried the case solely on the evidence at the time. Duke was not then known to him.

A charge of driving while impaired and also having liquor illegally in his motor vehicle was laid against Duke by officers of the 1st detachment in May 1959. These charges were as well dismissed. The disposition of these cases turned on the evidence adduced. At this late date records of the testimony given at the trial were not available.

In 1961 officers of the Belleville detachment laid charges against him of drunk driving, dangerous driving, careless driving, driving the wrong way on a one way street and having liquor illegally. He was convicted of careless driving and fined $300.00. The charge of driving the one way was a factor or element of the careless driving offence and for that reason was withdrawn. The other charges were dismissed. There was no suggestion in this case but that it was disposed of on its merits.

Richard Mackie has been manager of the Driver Licensing Section of the Ontario Department of Transport since 1967 but with that department since 1958. That office now retains records of convictions, charges and

motor vehicle accidents only back to 1966 except in the case of Criminal Code offences where they are obliged to retain them for a period of five years. From the information in his office he has compiled for this hearing a list of all traffic offences or motor vehicle collisions in which Duke has been involved and which are still shown in such records since January 1966. It indicates as follows: firstly, a conviction dated May 2nd, 1966, for an improper right turn in Hamilton when he was fined $5.00; secondly, a conviction on May 13th, 1966, in Georgetown for speeding when he was fined $10.00 and costs; thirdly, a conviction on November 23rd, 1966, at Brampton for speeding when he was fined $10.00 and costs; fourthly, a conviction on January 10th, 1967, at Hamilton, for speeding when he was fined $12.00; fifthly, a collision report of an accident occurring March 23rd, 1968, investigated by Ontario Provincial Police Officer McConnell. I shall deal with the facts and circumstances surrounding this particular collision in a separate chapter; sixthly, a conviction dated July 22nd, 1968, for speeding at Brampton at 10 miles beyond the speed limit; seventhly, a collision on December 12th, 1968, at Kitchener; a charge was laid under s. 66(1) of The Highway Traffic Act of failing to yield the right of way but the charge was dismissed; eighthly, a collision on October 3rd, 1968, investigated by Constable Ward of Stoney Creek. Duke was charged with careless driving but convicted only of making an improper right turn. This case was heard on January 3rd, 1969; ninthly, a collision report dated October 26th, 1969, refers to a motor vehicle collision in which Duke was involved, investigated by Constable Brooke of the Oakville Police Department. A charge of driving while impaired was laid. This charge was dismissed but he was fined $150.00 for having liquor illegally; tenthly, a conviction dated October 27th, 1969, for speeding 70 miles an hour in a sixty mile zone at Brampton; and finally, a conviction for a prohibited turn in Metropolitan Toronto on August 9th, 1970. The record shows five demerit points against his driving licence.

THE DUKE HOME

Of all persons involved who did not deserve the stigma associated with this investigation it is Mrs. Duke. She did nothing whatever to bring on the situations which demanded it. Her husband's treatment of her, however, was such that she felt compelled to seek help and guidance from the Police Chief of Hamilton and others. Her family secret had to be told herein because of the husband's claim to influence with the police and the statement attributed to her by Mrs. Citron to the effect that there was no use in her going to the police by reason thereof. The renting of an apartment in Hamilton and his infidelity had to be disclosed in answer to the suggestion that his quarters there was a place of association with persons of known criminal activity particularly Papalia and Le Barre.

Mrs. Duke possesses a delightful personality. She is generous and is noted for her kindness and participation in charitable work in Burlington. There was a suggestion in the evidence that but for the facts which gave rise to this inquiry there was a strong probability that she would have been chosen the citizen of the year 1969. She was aware of Duke's criminal record at the time of the marriage. Her great purpose in life thereafter has been to rehabilitate him and cause him to be respected and successful. With this purpose in mind she has cultivated the society of reputable persons of the community and caused her husband to associate with them. His criminal record was not known in Burlington or Oakville and she kept it a secret. She was a good wife. Her experience as an accountant was invaluable in the establishment and development of the business. He is a capable salesman and the success of their merchantry has been from their joint enterprise. They were very astute to start in such promotion at a time when it was not apparent that the demand for such implements would increase in the proportion that it has. They were fortunate in securing exclusive franchises for the sale of many lines of lawn mowers and in some cases embracing all of Canada.

Mrs. Duke had been very proud of the manner in which her husband had reformed and they enjoyed a happy married life together until some 6 years ago. About that time he began drinking very heavily and staying out late at night and would give her no explanation as to his whereabouts. Mrs. Duke said his pattern of living changed completely. She is still loyal and reticent to speak of her husband's faults but still conscious of her obligation to relate the truth which I am convinced she has at this inquiry. She says there is still a certain amount of happiness involved even now but there have been many acts of abuse and infidelity on his part that has marred it. He is vastly different when he has had a few drinks than when he is sober. He is afflicted with numerable idiosyncrasies such as his collection of guns and the building of an air raid shelter which are both associated with violence. He is unduly obsessed with the importance of wealth and influence. He seeks to lavishly entertain those in authority with the thought that some of their prestige might reflect upon him because of his association with them. He revels in the display of his accumulation of worldly goods, including expensive automobiles and otherwise. His drinking habits are not moderate and when he is affected thereby he is inclined to be brutal and boastful. He attempts to push aside lesser officers who have reason to check on his driving indiscretions. He is without moral fortitude to be loyal to his wife. When under the influence of liquor he has struck her and caused bruises that required the attention of a doctor. In 1967 she had a photographer take a picture of her bruised condition caused by him. On occasions she was concerned for her own safety. This fear was increased when she saw John Papalia and Red Le Barre with her husband in the office. Papalia lives at least part time in an apartment at 255 Bold Street, Hamilton, owned by a limited company controlled by Gasbarrini. Papalia has an extensive criminal record. His earlier offences were that of breaking and entering. His last convicition was on March 1st, 1963, in New York State for conspiring to import heroin into the United States. At that time he had been extradited from Canada to the United States and tried there and sentenced to 10 years' imprisonment. He was released from Lewisburg Penitentiary on January 26th, 1968, and deported back to Canada and has resided in Hamilton since then. Donald Earl Le Barre, commonly known as Red Le Barre, also lives in Hamilton. He has extensive convictions for gambling offences. His last conviction was in February, 1969, for bookmaking and fined $2,000.00. These two parties are close friends and associates together. Mr. Gasbarrini was convicted in Vancouver, British Columbia, on October 27th, 1949, of conspiracy to distribute narcotics and sentenced to 7 years in penitentiary. On his release in January 1955 he came to Hamilton. There have been no convictions against him since then. He is engaged in the construction business.

Mrs. Duke knew the reputation of both Papalia and Le Barre and their presence on the Duke premises caused her to worry as to her safety. She saw them at the office premises on two occasions in 1968 but never in the

home. Papalia however admits being in the home on an occasion in her absence. On one occasion after an argument with her husband she spent the night with her neighbour and on another occasion with friends. This fear led her to consult Leonard G. Lawrence, Chief of the Hamilton Police Force on July 11th, 1968. She met him at the apartment of her daughter-in-law, Mrs. Richard Duke, in Hamilton. She was very concerned as to her safety and would not have gone to such police chief but for her state of mind. She did not go to the Oakville or Burlington police nor the local provincial police because her husband was known to most of them and she preferred to discuss her problems with an officer outside the area of her home town and as well Papalia and Le Barre both lived in Hamilton. Duke had never used the names of any of these men in connection with threats to his wife. She told Chief Lawrence about her matrimonial troubles in recent years which she attributed to her husband drinking excessively, staying out late at nights and subjecting her to physical abuse. She also told him that she was in fear of her life due to the intrusion of Papalia and Le Barre on visits to the store and her home in Oakville. He requested her to phone him if either Papalia or Le Barre appeared on the premiss again. He never thereafter received such notification from her. A group of the Hamilton police force were then actively engaged in intelligence and investigation in respect to both Papalia and Le Barre. Chief Lawrence reported this matter to this section head to make discreet inquiries. He wanted to protect the confidentiality of Mrs. Duke's report to him. Complete surveillance was kept by such officers on Duke for some six weeks and about November 15th, 1968, Chief Lawrence received back a report from the officer in charge thereof to the effect that Mrs. Duke had nothing to fear in respect to either Papalia or Le Barre and that they could not place at any time either of such persons with Duke. He then phoned Mrs. Duke and told her that her husband had no association with either of these men. Mrs. Duke's fears as a result were completely allayed as far as Le Barre and Papalia were concerned.

Chief Lawrence had occasion to see Mrs. Duke again in the summer of 1970. She was then very concerned about the newspaper publicity concerning her husband. She then told him that neither Le Barre nor Papalia had been back to the premises as far as she knew since the summer of 1968. She also said to such officer that she could not understand where the newspapers were getting all the information concerning her husband which she thought had been known only to herself and such police chief and Archer Investigator Service. Chief Lawrence at that time asked her whether or not she had confided these matters to Mrs. Citron.

Mrs. Duke had engaged the Archer Investigator Service, a licensed private investigating firm of Hamilton, in 1967 to make investigation as to the whereabouts of her husband on the occasions that he was staying away from the home. Raymond Neil Archer of that firm had been a former Royal Canadian Mounted Policeman and had also been on the Hamilton

police force from 1944 to 1955. From his experience there he knew Papalia, Le Barre and Gasbarrini. He says his investigation covered intermittently a period of 3 years and revealed that her husband was not having any association with Papalia, Le Barre or Gasbarrini. In the three years he never saw Duke with any of them. He did uncover his association with one Marion Phillips, a married woman with whom he was frequently meeting in an apartment at the premises known as Southwick Place and being 255 Bold Street, Hamilton. These premises were owned by a company in which Gasbarrini had a controlling interest. John Papalia also had another apartment rented in such building. At no time did Duke and Papalia maintain the same apartment. At all times the apartments leased by them or on their behalf were on separate floors in the apartment building and no association between them was found in such building. When Mrs. Duke received the written Archer report she gave it to her friend Mrs. Citron for safekeeping, so that her husband would not see it. She sent for it shortly before the present sittings of this Commission and burned it on its receipt.

REHABILITATION

Throughout this hearing the statement was made on several occasions that one who had served a prison or gaol sentence imposed on him for an infraction of the criminal law had paid his debt to society. I do not accept the proposition that one should be regarded as completely free and clear of the stigma associated with his wrongdoing simply because he has served his sentence or some part thereof. He has not actually done anything voluntarily that gives him the right to say to the public "I am to be taken back amongst you as if I had never committed an offence". Involuntarily he has served his term at great expense to the country. The employer to whom he applies for work is entitled to know that there is at least desire and ambition on his part to desist from the conduct which caused him to be convicted in the first instance. His friends would like to be assured by his conduct and actions that he will not again be a source of embarrassment to them. Society welcomes back one who, having accepted his punishment with penitence, seeks again to take his proper place in the community by putting away the associations which led to his downfall. Before he is entitled to complete rehabilitation he must show ambition to refrain from further criminal activity at least. This also is borne out by the provisions of The Criminal Records Act passed at the last sittings of our Canadian Parliament. [s.c. 1969-1970, c. 40.] It provides that a person who has been convicted of an offence under an Act of Parliament of Canada or a regulation made thereunder may make application for a pardon in respect of that offence. The application is to be made to the Solicitor General of Canada who shall refer the request to a Board to make inquiries as to the propriety of granting such pardon and particularly in order to ascertain the behaviour of the applicant since the date of his conviction. The Board cannot make such investigation until two years have elapsed since the termination of imprisonment. In some instances the waiting period must be five years. Upon receipt of a recommendation from the Board that a pardon should be granted, the Minister shall refer the recommendation to

the Governor in Council who may grant the pardon. The form of pardon is as follows:

> "HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Parole Board, is pleased hereby to grant to ..... a pardon in respect of the offence of ..... of which he was convicted on the ..... day of ....., 19 ..... ;
>
> And this pardon is evidence of the fact that the Parole Board, after making proper inquiries, was satisfied that the said ..... was of good behaviour and that the conviction should no longer reflect adversely on his character and, unless subsequently revoked, this pardon vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the said ..... is, by reason of such conviction, subject by virtue of any Act of the Parliament of Canada or a regulation made thereunder."

Provision is also made that a pardon may be revoked if the subject is subsequently convicted of a further offence under an Act of Parliament of Canada.

DUKE'S FIREARMS

Central Records and Communications Branch in the General Headquarters of the Ontario Provincial Police in Toronto is the official repository for record information compiled for use of police departments throughout this province and given to other law enforcement agencies when required by them. It contains information as to criminal offences, traffic violations, photographs and other data which may be of value to the force in investigation or suppression of crime. The information is indexed under individuals' names with cross reference to aliases when known. It is compiled from information known to such police force that supplied to it from other sources. There was no file in such records department pertaining to George Clinton Duke until December 29th, 1969. As a result of the article appearing in the Oakville Journal Record making reference to Duke's criminal convictions the officials of that branch immediately sought information and commenced a file on Duke.

In the administration branch of the Ontario Provincial Police there is a department known as the Private Investigations and Firearms Section. The function thereof is to keep records of firearms as required by s. 93 of the Criminal Code of Canada. Chief Inspector Pettigrew is in charge of that department. Permits are issued by the officials thereof in respect of pistols, revolvers or a firearm that is capable of firing bullets in rapid succession during pressure of the trigger. Persons who possess such a weapon must register the same with the Commisioner of the Royal Canadian Mounted Police. Application for such registration must be made to local registrars in each province whose duty it is to send the same on to such section of the Ontario Provincial Police. When purchasing such a gun one must receive a permit to convey the same to his residence. If he intends to carry the same thereafter he must secure a permit for that purpose from the Commissioner of the Royal Canadian Mounted Police or a person expressly authorized in writing by him to issue a permit for that

purpose or the Attorney General of a province or a person expressly authorized in writing by him to issue such a permit. The permit can be issued for only a definite period of time and may be revoked before the expiration thereof. Section 97(2) of the Criminal Code provides that such a permit may be issued only where the person authorized to issue it is satisfied that the applicant therefor requires the restricted weapon to which the application relates (a) to protect life or property, or (b) for use in connection with his lawful profession or occupation, (c) for use in target practice under the auspices of a shooting club approved for the purposes of this section by the Attorney General of the province in which the premises of the shooting club are located, or (d) for use in target practice in accordance with the conditions attached to the permit.

The Royal Canadian Mounted Police took no part in the issue or recording of such a permit to carry. Prior to 1965 all local chiefs of police and the registrar for the Ontario Provincial Police had authority in Ontario to issue some such permits. In that year such authority as far as local police chiefs was concerned was cancelled and six registrars were appointed for that purpose with one living at each of the following cities, namely, Windsor, London, Hamilton, Toronto, Ottawa and an official of the Ontario Provincial Police at Toronto. The application is now made in the first instance to the local police chief who must recommend the issue thereof before it is considered and then send the same on to such an issuer therefor for his consideration. Whether it be an application in the first instance or one for renewal a check is now made on the applicant, including a search as to his criminal record, before issuing such permit to carry. The permit is valid only for the current year. If the applicant comes within the provisions of s. 94(4) of the Criminal Code above quoted, has no serious current criminal record and is a good citizen, such permit is usually granted. Registrar A. Swan who was a civilian employed by the Ontario Provincial Police was in charge of the issue of such permit to carry, until his death on February 13th, 1969. It had been the department's interpretation of the relevant sections of the Code that it was mandatory to issue a permit to register or to convey a firearm to the purchaser's home. After the death of Mr. Swan, Sergeant Albert L. Haughton was appointed local registrar of firearms and it was thereafter his responsibility to look after the issuing of such permits.

The first registration of guns by Duke commenced on October 4th, 1955. The records show the make of gun, caliber, model, serial number number of shots, length of barrel and the disposition of any disposed of by him. Between the said date and November 13th, 1969, he had registered a total of 79 restricted firearms. Such records show the following transfer of guns by him:

1967

Sept. 22 to Richard Duke a 9 mm. Walther Revolver.

Nov. 30th to Mrs. Citron a .32 Savage Revolver.

1968	
October	to Pauline Robbie, Waterdown, a Browning .25.
1969	
Mar. 9th	to Albion Arms, a dealer in Peterborough, a Sig Neuhausen.
1970	
Feb. 17th	to J. R. Phelps, Oakville, a 9 mm. Browning.

Mr. Haughton states that his department now take a file check on everybody who makes application for a permit to carry such a weapon regardless of who he is or how long he has had a permit. He voiced the opinion, however, that providing a man has not had any serious current criminal record and is an upstanding citizen he will certainly get a permit to carry a concealed weapon provided he comes within the confines of that department's policy and confines of the Criminal Code of Canada as outlined in s. 97 thereof above referred to. Under the policy that now exists such a permit would not be issued to Duke whether he had a criminal record or not. He feels that persons do not need to carry such a weapon for protection of themselves or their funds except in extenuating circumstances.

Duke was involved in a traffic accident on June 10th of this year. When traffic officer John Chamberlain of the Ontario Provincial Police came on the scene and found his car damaged no one was with the vehicle. On examination thereof he found a 30 caliber rifle under the front seat together with a clip of 70 rounds of ammunition therefor. Such officer found Duke and his son Richard at the Hamilton hospital. Neither was badly hurt. Duke had no permit or right to carry this gun in his vehicle at the time. This would indicate that Duke on this occasion at least had one of his guns illegally in his motor vehicle and illustrates the occasion for the fear that seemed to exist on the part of some of his acquaintances that his gun collection was a source of danger, particularly when he was drinking to excess.

Section 98(2) of the Code seems to indicate that if the application to register a concealed weapon is before the appropriate registering authority in proper form they have to issue a permit. The reason for this may be that the police desire that persons who have such weapons should register them so that that force will have knowledge of their existence and know where they are. However there is a provision under s. 98(3) to the effect that where a local registrar of firearms has notice of any matter that may render it desirable in the interests of the safety of other persons, that the applicant should not possess a restricted weapon, he shall report the matter to the Commissioner. The Code then provides that the registration certificate can be revoked by the Commissioner of the Royal Canadian Mounted Police and that he may refuse to issue a registration certificate where he has notice of any matter that may render it desirable in the interests of the safety of other persons, that the applicant should not possess a restricted weapon. If there is a refusal or revocation under s. 98(a), the

applicant has the right of appeal before a provincial judge. Section 98(g) of the Code also confers on the superior courts of the province jurisdiction to issue a warrant authorizing the seizure of any firearm or other offensive weapon or any ammunition or explosive substance where an application has been made to the court by or on behalf of the Attorney General with respect to any person and the court is satisfied that there are reasonable grounds for believing that it is not desirable, in the interests of the safety of that person or of other persons, that that person should own or have in his possession, custody or control of a firearm or other offensive weapon or any ammunition or explosive substance. Since this hearing Mr. Duke has turned over his entire collection of guns to the Ontario Provincial Police for safekeeping. It is said that he did this because of the publicity that was involved in connection with his collection and that there was a possibility his premises might be raided by persons interested in securing the same. It may be that the proper authority will be of opinion that he ought not hereafter to have the right to keep such weapons in his residence.

In the year 1969 there had been 10,227 permits to carry concealed weapons issued by the registrar of the Ontario Provincial Police. The majority of these were to members of shooting clubs, bank employees and security guards. The other five local registrars during the same year had issued 5,283. The fact that Duke had a permit to keep such guns in his residence and even a permit to carry such a gun was not due to any influence he had with any police force but rather to the privilege accorded by the provisions of the Criminal Code above referred to.

Duke's record in the Central Records and Communications Branch of the Ontario Provincial Police which was started on December 29th, 1969, is as follows:

"

Date & Place	*Charges*	*Disposition*	*Name & Number*
Aug. 28/25	Theft	3 mos def & 9 mos indef.	JONES, G. Industrial Farm, Burwash 9083 FPS 134897
Sept. 13/29 Hamilton	Robbery with Violence	Dismissed	Clinton Duke PD 5254
Jan. 20/30 Buffalo NY	Robbery 1st Degree	30 yrs to life	DUKE, Clinton @ JONES, Clinton @ JONES, George @ RADCLIFFE, Harry @ GRAHAM, Arthur @ 'RED DUKE' Auburn Jail 43665

Date & Place	*Charges*	*Disposition*	*Name & Number*
June 24/42		Deported to Canada	
Jan. 15/58 Oakville	(1) Impaired Driving. Sec. 223 CC (2) Having other than Res. Sec. 43 (1) LCA	(1-2) Dismissed	DUKE, George C. QE Way Burlington
Jun. 10/59 Oakville	Having Sec. 43 (1) LCA	Dismissed	DUKE, George C. 3226 Lakeshore Hwy. Trafalgar Twp. Ont.
Jun. 16/59 Perth	(1) Imp. Dr. Sec. 223 CC. (2) Having Liq. Sec. 43 (1) LCA	(1-2) Dismissed	DUKE, George Clinton 1184 Plains Rd. E. Burlington
Dec. 18/61 Belleville	(1) Dangerous Driving. Sec. 224 CC. (2) Drunk Driving Sec. 222 CC. (3) Careless Driving Sec. 60 HTA (4) Having Sec. 43 (1) LCA (5) Wrong Way HTA	(1-2) Dismissed (3) Fined $300 & $193 Costs. APPEALED (4-5) Dismissed	DUKE, George Clinton 3226 Lakeshore Hwy. W. Burlington
Jun. 18/68 Hamilton	Careless Dr. Sec. 60 HTA	Withdrawn	DUKE, George Clinton 3226 Lakeshore Hwy. W. Oakville, Ont. UTT 856817 FPS 134897
Jul. 22/68 Mississauga	Sec. 59 HTA	Fined $10 & $4. Costs.	DUKE, George Clinton 3226 Lakeshore Hwy. W. Oakville, Ont. UTT 973562

Date & Place	*Charges*	*Disposition*	*Name & Number*
Nov. 20/69 Burlington	Sec. 59 (1) HTA Speeding	Fined $10 & $3. Costs.	DUKE, George Clinton 3226 Lakeshore Hwy. W. Oakville, Ont. UTT 445424."

Information as to Duke's early criminal record had reached the files of the Weapons Branch of the Ontario Provincial Police on July 24th, 1967. That developed by reason of the fact that Detective Sergeant Mansfield of the Oakville Police Force had telephoned Swan to ascertain if the latter realized the large number of weapons that Duke was collecting. Mansfield at the time had no knowledge of the criminal record. It was suggested by Swan that such Detective Sergeant should do some research as to the reason for such collection and during that investigation he made a request for a record check and found the above information as to Duke's criminal convictions from the files of the Royal Canadian Mounted Police. Chief Oliver of the Oakville force then wrote to Swan enclosing that record consisting of the 1925 and 1930 convictions and his deportation to Canada from the United States. At this time the Oakville police department must have been concerned about Duke's gun collection because Chief Oliver had telephoned Swan for information as to the extent thereof. On August 2nd, 1967, Corporal Dawson of the Weapons Branch sent to such chief of police photographs of the master cards showing all firearms then registered in Duke's name. Duke had been first issued a permit to carry a restricted firearm by Oliver at Oakville on April 2nd, 1963, and again on January 4th, 1965. Thereafter permits for the years 1966 to 1969 inclusive had been issued by Mr. Swan.

From all the evidence concerning the registration of Duke's firearms there is nothing to indicate any preferential treatment given by police authorities in this area. It is quite true that officers assisted him on some occasions by taking the gun in to complete the registration but this may have been within their obligations. It is quite true that it was not wise to allow him to have a permit to carry a concealed weapon but the authorities did not know of his problems with liquor and as soon as the matter was brought to their attention the permit was not renewed.

THE DUKE LAWNORAMAS AND BARBEQUES

The Duke Company instituted its first Lawnorama as a sales device in the year 1957. They were then held at the plant premises. In 1958 Duke had purchased his present home with the considerable grounds surrounding the same. He then treated part of such premises as a research centre for the company. This consisted of a portion of the land where different types of grass were sown to test and demonstrate thereon the cutting qualities of the different machines he had on hand. One area would be devoted to grass used on a golf green where special equipment is used to mow, while another might be the ordinary lawn variety. The garden would also be available to display the operation of tillers, tractors and tools. The Lawnorama was the occasion when all the company's retail dealers, distributors, salesmen, customers and potential purchasers were invited to the premises to see the display in operation. Written invitations were mailed to those invited with a card to return showing acceptance or otherwise. Those attending were treated to liquid and other refreshments with numerous door prizes. Such a group would also include representatives of federal and provincial government departments who purchased a very considerable amount of such implements and machinery for the use of their various properties. Landscape contractors and sod growers were also there. The group as well included many dignitaries and friends. It was a well organized valuable selling arrangement. The occasion was meant to be a means of display and interesting those present in future purchases rather than a sales drive on that particular occasion. As many as one thousand people would attend for the event. While the company had some exclusive franchises there were other lines in which it had to compete with other similar vendors and advertising was a very necessary part of the business. The Duke Lawnorama held in September of each year became not only a great advertising event but also one of the social attractions of that area. It was not unexpected that some senior officers of the Ontario Provincial Police would be invited to such event. Their department purchased considerable amounts

from the Duke Company and they were interested always in new type of equipment. The propriety of the attendance of some of such officials at these events will be discussed hereinafter. Later in the Fall the Dukes also held a barbeque to which a substantial number of acquaintances and friends were invited. This occasion was not directed towards advertising to the extent that the lawnoramas were but was more of a hospitable, social get-together. The number invited to these functions did not exceed two hundred on any occasion.

Particulars have been given of the attendance of Ontario Provincial Police personnel at such lawnoramas and barbeques. It is relevant to our inquiry to set this information out in detail as indicating the extent of the association of the various officers with Duke. In giving this list of persons, for purposes of brevity, I will state their rank only on first mention. Apparently it was a custom which originated in 1965 because prior to that the only attendance in 1964 was that of Corporal Doherty who lived in a house situate on the grounds rented by him from Duke. In 1965 attendances at the lawnorama were Assistant Commissioner Neil, Chief Superintendent in the Ontario Provincial Police traffic division McKie, Superintendent Robbie, Corporal Doherty. No evidence as to a barbeque was given as to that year. In 1966 personnel attending at the lawnorama were Neil, Robbie, Staff Superintendent Rodger, then Superintendent in No. 3 District, Staff Superintendent Bolt, Sergeant Major Wilson, Doherty. In this year the Dukes had a barbeque at which Rodger and Wilson and their wives were in attendance. In the year 1967 attendances were as follows: Assistant Commissioner Bird, Neil, Assistant Commissioner Whitty, Chief Superintendent Miller, Inspector Wilkinson, Sergeant Hillman and Corporal Bell. Attendances at the barbeque that year were Rodger, Wilson, Whitty, Wood and their wives.

ANNUAL CHRISTMAS GIFTS

Throughout the years Duke Lawn Equipment Company has been generous in its donation of Christmas presents. The practice is so extensive that a Cardex system is retained to show the various donees and the description of the gift from year to year. They consist usually of magazine subscriptions, cheese, wine, liquor, salad bowls, icecrushers and similar useful utensils. The recipients were mostly valuable customers whose goodwill the company sought to preserve but also included friends and operators of golf courses. A great percentage of the gifts were of a value between $5.00 and $10.00 and were sent direct from the store at which they were purchased except gifts of cheese were delivered from the business premises. In the early days of the inquiry evidence was given of truckloads of gifts leaving the Duke premises each Christmas but this was merely supposition. The story may have developed from the fact that the Duke Lawn trucks were used by Mrs. Duke in delivering baskets or toys on behalf of the charitable work of the Burlington Christmas Bureau. Senior police officers in District No. 3 were also the recipients of gifts at this season. The names of such donees and the description of the gifts were kept in such Cardex Index system in the same manner as other donees. There was no attempt to conceal the name of the recipient or the nature of the gift. The value thereof never exceeded $10.00. Such card indicates the following gifts to Ontario Provincial Police personnel: to Rodger in 1966 a stacked salad bowl, in 1967, 1809 wall type icecrusher, in 1968 a carving set and in 1969 a magnum of champagne shown to cost $7.85; to Wilson in 1966 a salad bowl, in 1967, 1809 wall type icecrusher, in 1968 a carving set and in 1969 holiday cheer showing to have cost $9.80; to Whitty in 1966 a stacked salad bowl set, in 1967, 1809 wall type icecrusher, in 1968 a carving set and in 1969 holiday cheer the cost of which was $9.80; to Wilkinson in 1966 a cheeseboard, in 1967, 1809 wall type icecrusher, in 1968 a carving set and in 1969 a wine selection costing $5.95.

The above appeared to be the extent of gifts to members of the Ontario Provincial Police or to other police officers.

A police officer's initial obligation is to perform all duties of the office properly imposed upon him to the best of his ability. All his other activities or social behaviour are subordinate to that obligation.

Exact ethical standards and complete honesty are more essential for the police than for most other groups in our society. Because they are entrusted with the enforcement of laws and rules that govern relationships as between the citizen and the state as well as between citizens, a policeman's violation of the law or corrupt failure on his part to enforce it dishonours the authority he represents. It is essential that the public should have no doubts but that he will perform his duties impartially. He may participate in community activities so long as the same do not interfere with fulfilment of his police duties or reflect adversely on his capacity to act impartially. He should not allow his associations or participation with others to give reason for suspicion that there may be any interference with the proper fulfilment of his duties. While at a private social gathering he is still regarded by the others as a police officer. He must always keep his social activities on such a basis that he is in no way restrained thereby in exercising his official duties in the fullest and most impartial manner. He need not ostracize himself from society but he must be circumspect in his choice of friends. He may benefit from association with the general public in that their views may be of assistance and help to him in solving problems associated with his enforcement of the law.

However, if it be known that he has accepted a gift from one who has breached the law the public will be suspicious that he is reluctant or unable to fully carry out his responsibilities against that person and they may entertain such doubts even in cases where no action should be taken. If the recipient of such a gift is a senior officer those acting under him may be influenced by his conduct to accept similar favours themselves. The Code of Offences set up under the provisions of The Ontario Police Act do not contain any specific provision covering the receipt of gifts by a police officer from persons with whom he may have to deal in the course of his duty and it may be that sufficient instruction has not been given in respect thereof. The Police Department Rules and Regulations of Oakland, California, U.S.A., provide the following:

> *"Section 310.70 Gifts, Gratuities, Fees, Rewards, Loans, etc., and Soliciting*
>
> Members and employees shall not under any circumstances solicit any gift, gratuity, loan, or fee where there is any direct or indirect connection between the solicitation and their departmental membership and employment.
>
> *Section 310.71 Acceptance of Gifts, Gratuities, Fees, Loans, etc.*
>
> Members and employees shall not accept either directly or indirectly any gift, gratuity, loan, fee, or any other thing of value arising

from or offered because of police employment or any activity connected with said employment. Members and employees shall not accept any gift, gratuity, loan, fee, or other thing of value the acceptance of which might tend to influence directly or indirectly the actions of said member or employee or any other member or employee in any matter of police business; or which might tend to cast any adverse reflection on the department or any member or employee thereof. No member or employee of the department shall receive any gift or gratuity from other members or employees junior in rank without the express permission of the chief of police."

In the light of Duke's reputation for traffic violations it was indiscreet for any of the senior officers of that division to accept Christmas gifts from the Duke Company.

THE DUKE BAHAMAS APARTMENT

The Duke Lawn Equipment Company Limited has had a four roomed apartment under lease in Freeport, Grand Bahamas Island, for some time. Mrs. Duke and her husband spend vacations there and as well permit their friends to occupy it occasionally. One of the statements made by Mrs. Citron was that Mrs. Duke told her that Rodger and Wilson had spent their vacation there. Mrs. Duke says that the only police officer who occupied such apartment was one John Robert Phillips who is a sergeant with the Burlington police force and a member thereof for 17 years. He has known Duke for about 12 years. Mrs. Duke is very active in the Zonta Club which is a member of the Christmas Bureau. Each season she assists by delivering all the hampers from such bureau to needy families in Burlington. Constable Phillips helps her do this work each year. He had planned a chartered trip to the Canary Islands in the Spring of 1969. His 18 year old daughter took ill with mononucleosis and the trip had to be cancelled. When Mrs. Duke heard of this she approached Phillips and said that if the Constable could afford to pay the plane fare for himself, wife and daughter that they were welcome to use their apartment in the Bahamas rent free. At first they did not want to accept his hospitality but he thought such a holiday would be beneficial to his daughter's health. Mrs. Duke insisted that they go. They finally accepted and occupied such apartment with a girl friend of their daughter at Freeport from April 10th to April 30th supplying all their own provisions. Duke had nothing to do with such arrangement. I am satisfied from all the evidence that no other police officer has ever been a guest of or occupied such premises of the Dukes at any time.

On four occasions when off duty Constable Phillips has assisted the Dukes' Lawnoramas by directing traffic on and off the premises. He was paid for such attendance on each occasion. In May of 1969 Constable Phillips went to the Duke Company to purchase a hand mower. There was the bottom section of one that had been sitting there for six years and which

needed replacement of parts. It was given to such constable at the time as it was of little value. I am convinced there was nothing sinister about this gift. Such constable has never been asked by either Mr. or Mrs. Duke for any favour in police matters.

Mrs. Citron in her testimony said that this officer met her on the street between the first appearance in court on October 31st and the second on November 21st, 1969, and told her as follows:

> "We told Duke how he could beat this charge, namely, by committing himself voluntarily for psychiatric treatment and the other to say that it was a starter's pistol."

Constable Phillips denies such conversation but says he did talk to Mrs. Citron on the street after the hearing. At that time he remarked to her that if Duke had put a gun to her head he should take psychiatric treatment. Mrs. Citron's version of this conversation appears to be difficult to believe. One cannot imagine such an officer as Phillips being foolish enough to make such a statement to Duke or if he had done so thereafter to acknowledge the same to Mrs. Citron who was then complaining to him about the result of the case.

DUKE'S CARELESS DRIVING CHARGE OF MARCH 23rd, 1968

In the early hours of the morning on March 23rd, 1968, Sergeant Roy Roberts, who was then a corporal in the Burlington Detachment and was acting as shift supervisor on patrol, noticed a vehicle which had driven off the pavement on to a guide post on the ramp leading from Burlington Street to the Queen Elizabeth Way in the City of Hamilton. Roberts observed that the vehicle had driven on to the shoulder and struck three steel marker posts and three wooden guide wire posts. Duke was at the vehicle and said to Roberts that the vehicle had "just left the road, came around too fast" or words to that effect. Roberts noted that Duke had been drinking and, although he did not consider Duke to be impaired, concluded that the car had left the road by reason of Duke's drinking.

Roberts radioed to have an officer sent to the scene and shortly thereafter Constable McConnell arrived. McConnell puts the time at about 3 a.m. Roberts instructed McConnell to investigate the accident and the marks on the road and particularly instructed McConnell to observe Duke's condition. Roberts then left the accident scene. He did not assist McConnell by putting out flares or directing traffic but, when McConnell was asked about this, he indicated that it was not usual for the shift supervisor to render such assistance at such an early hour of the morning when there was no traffic on the roadway.

McConnell proceeded to investigate the accident. He noted damage to Duke's vehicle, to the guide posts and the wires, and also that Duke appeared to have been drinking, although he did not appear to be in such a condition as would justify a charge of impaired driving. At the accident scene, however, McConnell did conclude that Duke's speed had been too fast for the road and weather conditions and that, combined with the fact that he had been drinking, led McConnell to conclude that Duke should be charged with careless driving. McConnell says that he told Duke at the scene of the accident that he would no doubt be charged with careless driving and cautioned him. Duke in his evidence testified that McConnell

did say that there was a possibility that a charge would be laid, but that McConnell would not know until he went back to the office. In any event it is clear that Duke was not served at the scene of the accident with the "Summons" portion of the Uniform Traffic Ticket which is available if the investigating officer chooses to lay a charge at the scene of the accident although McConnell's evidence was that he has never issued a careless driving summons at an accident scene, but reserves its use for such offences as speeding and the like.

Later that same morning before their shift ended, Roberts and McConnell discussed whether a charge should be laid. Both concluded that there was enough evidence to warrant a charge of careless driving.

It might be helpful at this point to review the established procedure for laying such a charge. According to the evidence, if such a charge is to be laid, the investigating officer completes the Uniform Traffic Ticket. In this case, that would be Constable McConnell's responsibility. He then gives it to his supervisor, who checks it as to form and indicates his approval by initialling it and leaving it in a tray on the desk of the court officer. In this case the supervisor was Sergeant (then Corporal) Roberts and the court officer was Corporal Leeking. In the case of a charge of careless driving McConnell would not serve the summons on the motorist at the scene. This practice is followed in speeding charges or lesser offences only. For careless driving charges a summons later signed by a Justice of the Peace is served.

McConnell testified that he completed the Uniform Traffic Ticket on March 25th, 1968, and at the same time he completed the motor vehicle traffic accident report, Ex. 40. When the investigating officer completes the Uniform Traffic Ticket he sets the date for the appearance of the accused in the lower portion of the ticket. McConnell checked his court list and ascertained that June 10th, 1968, was his court date, and accordingly inserted that date as the return date for the hearing of the charge. He then gave both the Uniform Traffic Ticket and the accident report to Roberts to be checked. Roberts recalls checking the ticket and being satisfied with its correctness whereupon he initialled it, and his initials and identification number appear on the Immediate Return portion of the ticket which has been marked as Ex. 42. While Roberts did not specifically recall leaving the Uniform Traffic Ticket in Corporal Leeking's tray, he did give evidence that his practice was that once he found the documents to be in order he would leave the first three copies of the Uniform Traffic Ticket on the court officer's desk, put the fourth copy in the Staff Sergeant's room to be sent to Toronto, and the last copy in the secretary's room to be noted by her and returned to Toronto when the matter has been disposed of in court.

The fourth copy certainly found its way to the right place because Inspector Jones, who was then Staff Sergeant in charge of the Burlington Detachment, forwarded the fourth copy (which is Ex. 42) to Toronto

together with the accident report. This must have happened on or about March 26th, 1968, because the accident report, Ex. 40, indicates that a copy was received in District Headquarters on March 27th, 1968. The report is dated March 25th, and Jones' evidence is that one copy of the accident report is kept on file at the detachment, one copy is sent to District Headquarters and the remaining copies are forwarded to the traffic unit in Toronto.

What happened to the first three copies is and remains a mystery. Corporal Leeking the court officer did not find the ticket in his tray and never saw it. He speculated that it must have been removed from the tray on his desk. Duke clearly received no summons and heard nothing more about this charge and, as he put it, he simply assumed notwithstanding McConnell's intimation that a charge would be laid that "they hadn't found it necessary to lay a charge" because he received no ticket or summons.

To this point the testimony is not really in conflict, but from this stage forward the evidence becomes contradictory. Jones says that on the morning of March 28th, 1968, Staff Superintendent Rodger, who was then Superintendent in charge of Number 3 District, called Jones upstairs to his office. He had Duke's accident report on his desk together with about 30 other reports involving one-car accidents. He pointed out to Jones that no charges had been laid as a result of these other 30 accidents. He felt that the Duke accident was similiar, and told Jones that he wanted the charge against Duke withdrawn because of insufficient evidence. According to Jones, Rodger also said that he wanted to speak to McConnell, and Jones was to have McConnell attend at his office that evening after he reported for his shift.

Rodger in his evidence did not recall having any conversation with Jones, nor of having a number of accident reports on his desk. He did recall suggesting that there was not sufficient evidence for a charge to have been laid, but he thought that he had said that to Roberts. He agreed that Jones would not likely be lying about this because "he would have no motive" to do so.

There was also evidence that Jones and Rodger had a conversation in August of this year about their conversation of March 28th, 1968. Rodger says that he spoke to Jones in the office in Burlington and asked him specifically whether or not Jones recalled discussing the Duke accident with him. According to Rodger, Jones said that he had not discussed it with Rodger. Jones on the other hand testified that Rodger was in his office on August 26th, 1970, that he indicated that he could recall nothing about the Duke accident and that Jones had then recounted the conversation of March 28th, 1968, including Rodger's order to have the charge withdrawn because of insufficient evidence. According to Jones, Rodger said, "it was not me, it was Wilson" and Jones said "it was you."

To return to the incidents of March 28th, 1968, Constable McConnell says that he was advised by Jones at about 3 p.m. to remain at the office

because Superintendent Rodger wished to see him. At about 5.30 p.m. Jones received a radio message from Rodger saying that he would not be able to make it back in time and that Jones should proceed with the matter that he had wanted to see McConnell about. Jones then told McConnell that he had received instructions from Rodger to withdraw the charge, as there was insufficient evidence to support it. Jones and McConnell discussed the matter "quite warmly" (as McConnell testified) and Jones said that McConnell could do whatever he wanted. In McConnell's words, Jones said "it was entirely up to me." Although Jones had understood Rodger to order that the charge be withdrawn, Jones apparently left it to McConnell to decide whether he wished to withdraw the charge or not. In fact, Jones shared the opinion that both Roberts and McConnell had reached that there was sufficient evidence for the charge to be laid and proceeded with and both Jones and McConnell felt that there was favouritism and preferential treatment being shown to Duke.

In fact, McConnell, who understood from Jones that the option to withdraw the charge or not lay with him, saw fit not to withdraw it or to take steps to withdraw it.

On the following day, March 29th, 1968, Sergeant (then Corporal) Roberts, was advised by Jones to remain at the detachment for an interview with Superintendent Rodger regarding the Duke accident. While Roberts remembers seeing Superintendent Rodger about the accident, he does not remember the conversation between them, and he is unable to recall any suggestion of dropping or withdrawing the charge. Rodger's recollection was that the purpose of their interview involved a reprimand by Rodger of Roberts for having left Constable McConnell alone at the accident scene notwithstanding that the pavement was wet and would be (according to Rodger) in almost continuous use. Rodger testified that he suggested to Roberts in this interview that there was not in fact sufficient evidence for a charge.

Rodger telephoned Roberts at the end of August of this year and asked him to recall their conversation about the Duke accident. Roberts at that time told him, as he had told Staff Superintendent Kay and Chief Inspector Lidstone, that he did not recall ever discussing this matter with Rodger but with someone else. Subsequent to these occasions, however, Roberts consulted his diary and found an entry dated March 29th, 1968, which reminded him that Jones had advised him to remain at the detachment for an interview with Rodger. When recalled, Roberts still was unable to recollect the subject matter of his conversation with Rodger.

McConnell was in court on June 10th, 1968 (according to the court docket, Ex. 44, and to a note in his diary), but no reference to Duke appears on the court docket for that date. It did not come to McConnell's mind that the Duke case was not on the list. Corporal Leeking's diary of all detachment charges shows no reference to the Duke charge on June 10th, 1968, and while the detachment record book which was kept by the

secretary shows a charge of careless driving laid against Duke arising from the accident of March 23rd, 1968, there is no notation under the head "Disposition".

On June 10th, 1968, the secretary brought the Uniform Traffic Ticket to Jones. Jones called the court on that date, and was advised that the clerk could not find the case on the docket. Jones decided to give the matter a little time and, according to his evidence, phoned the court again on June 18th, 1968. The clerk again advised him that she could find nothing in her records and said that in all probability the charge had been withdrawn. There is no apparent reason why Jones selected June 18th to make this call. That was not McConnell's regular court day, and he testified that he was not in court on that date. The court docket (Ex. 45) makes no reference to the charge against Duke, nor does Leeking's diary (Ex. 46) under that date.

At all events, after his conversation with the clerk, Jones filled in the back of the "Disposition" portion of the Uniform Traffic Ticket with the name of the Magistrate, the name of the Crown, the date "June 18th, 1968", and the notation "insufficient evidence to warrant charge." He then signed the ticket "Staff Sgt. Jones", and sent it to Central Records in Toronto (Ex. 43).

From the evidence, nothing further was heard or done in connection with this charge until a conversation between McConnell and Jones sometime later. McConnell's recollection was that the conversation took place in the spring of 1969. Jones was equally certain that it took place in 1970, after Kay and Lidstone began making inquiries about Jones' notation on Ex. 43. Whatever the date, Jones called McConnell into his office and said that he had received Ex. 43 from Central Records, who wished to know the disposition of the case. When McConnell read the name on the ticket, he handed it back to Jones and said "You know more about it than I do" and left.

The actions which led to the failure of this charge being prosecuted are not clear. A senior officer or crown attorney should have the right to advise against charges being prosecuted by a junior officer when the former's experience and knowledge indicate clearly to him that the facts do not justify such action or when there is not sufficient evidence. His supervisory obligations also require him to direct prosecutions in those cases deserving such action even though the junior investigating officer may assess the evidence gathered by him as insufficient for such purpose. The senior officer will not be correct in his diagnosis in all cases. The magistrate or judge who tries the case will have to make his decision which may or may not be in accord with that of such senior officer. The latter's judgment may either be reversed or affirmed by a court of appeal. Therefore it does not always follow because an officer in charge of a detachment advises against proceeding with prosecution that he is causing the same "to be fixed". This is an expression which is properly referable only to

those cases in which there could be no justification for the charge being dropped. The problem to be considered here is whether Rodger was acting honestly and impartially in his assessment of the facts surrounding Duke's driving at this particular time.

I think that in the relation of these events some confusion has developed by use of the term "withdrawal" of the charge. In my opinion the proper description of the cessation of the prosecution herein is that it came to an end because the same was not processed by having a summons signed by the appropriate justice of the peace and then served on Duke.

Section 6(5) of The Summary Convictions Act, R.S.O. 1960, c. 387, provides that every summons issued for a contravention of any provisions of The Highway Traffic Act, except certain offences not here relevant, should be served by sending it by prepaid post or by personal service within twenty-one days of the alleged contravention. The result was the charge could not be prosecuted and was at an end when such period of time elapsed. It was useless thereafter to put it on any court list and nothing further could be done towards its prosecution. The matter could not then properly come before the magistrate and in my opinion it is erroneous to speak of anyone having withdrawn it.

If there was a deliberate interference with the due prosecution of this charge it was accomplished when the first three copies of the Uniform Traffic Ticket which had been left in the court officer's desk about March 26th to be processed were put out of the way so that the summons could not be issued and served in a normal manner. No blame therefor can in any way be attached to Constable McConnell. It had always been his intention that the case should proceed against Duke. Having discussed the matter with his senior officer Roberts and having completed the copies of the Uniform Traffic Ticket and left them to be processed, there was nothing further for him to do except to appear in court on the day set for trial. He was angry when Jones told him of instructions as to withdrawal of the charge. He was likewise displeased when Jones spoke to him much later, either in 1969 or 1970, and told him that Central Records wished to know the disposition of the case. He then replied, "You know more about it than I do." I assess McConnell as a conscientious officer who would be provoked at any interference with the proper discharge of his duties. Sergeant Roberts and Corporal Leeking are likewise free of any blame or suspicion in this matter.

I am convinced that Rodger made it known to Jones that he did not think the charge should be proceeded with. There may have been some justification for him thinking that the magistrate would not convict on the evidence available in this case.

The case of *Rex v. Roseblade*, [1943] O.W.N. 355 was the leading authority for many years subsequent thereto in regard to the extent of proof necessary to convict an accused of careless driving. The only evidence submitted by the crown in this particular prosecution was that of

two police officers who found the bus which had been driven by the accused upon its side in the east ditch of the highway facing north with one deeply indented tire track leading from the rear of the bus up on the shoulder and along the same a distance of 115 feet to the edge of the pavement. The road was level and dry and the weather was clear at the time. The magistrate had convicted the accused of careless driving on these facts. An appeal was taken therefrom to His Honour the late County Court Judge Harvie at Barrie. His judgment is reported in the above notes. In allowing the appeal and dismissing the charge he stated he felt bound to do so because, to do otherwise, would be a denial of the application of one of the most important principles in our jurisprudence, namely, the obligation of the crown to prove sufficient facts in connection with the accused's manner of driving at the time to establish the required degree of negligence on his part. He held that the position in which the bus was found and the marks and tracks did not amount to sufficient proof but at the most gave grounds for assumption only. For many years magistrates refused to convict on such evidence unless the crown also established direct proof of the manner of driving.

In an unreported case of *Regina v. Bain*, heard October 9th, 1963, the Ontario Court of Appeal had reversed the decision of a magistrate and acquitted a driver charged with careless driving where there was no direct evidence thereof. That court had thereby recognized and approved the decision in *Rex. v. Roseblade.*

In a later case of *Regina v. McIver*, [1965] 1 c.c.c. 210 the full court of five appeal judges sustained a conviction of careless driving where, although there was no direct evidence of the driving, the tracks and position of the vehicle established the accused had driven his motor vehicle in such a manner as to cause it to leave the thirty foot travelled surface of the highway and be in collision with an automobile parked off on the shoulder in a well lighted area of a street in the Town of Seaforth. The driver in that case as well had been drinking but was not impaired. The magistrate found on the circumstantial evidence that the driver had driven off the paved portion of the road some distance back from the parked vehicle which he should have seen ahead of him for a considerable period of time and had ample opportunity and space to either turn to his left to avoid it or bring his vehicle to a stop. The accused had offered no evidence on his own behalf at the trial. The court of appeal found in this case that there was sufficient evidence on which the magistrate could draw the inference of guilt and dismissed the appeal from his conviction. In this latter case the facts established were more indicative of guilt than in the *Roseblade* case. The *Roseblade* decision is stated to be overruled by the latter but the cases were different factually and it is questionable whether the principle enunciated in *Roseblade* was thereby altered. Nowhere in the *Roseblade* decision did the court indicate that an accused could not be convicted on circumstantial evidence. In the *McIver* case the

court of appeal held that the circumstantial evidence therein adduced was of a nature sufficient to allow the magistrate to draw an inference of guilt and there was no evidence to support any other finding. Applying the principles set out in the *McIver* case to the facts which could have been established against Duke, it would appear the only rational inference to be drawn therefrom was that the crown did not have sufficient evidence to warrant a conviction of careless driving. No witness saw the vehicle being driven. It was found to be northbound on the off ramp with the left side of the vehicle on the east shoulder and the front bumper resting against one wooden guide post with another beneath the vehicle. The pavement was wet. The mishap occurred while it was dark. While it was evident Duke had been drinking his condition was not such as to warrant an impaired driving charge. The only damage to the vehicle was to the left front bumper and wheel. If the magistrate had consideration to the above decisions it is very doubtful if he would have felt free to convict Duke on such charge. But for Duke's boasting of his influence with police officers in Division No. 3 of the Ontario Provincial Police, it is doubtful if anyone would have criticized a senior officer or a crown attorney advising against prosecution on such charge.

I do not think that Rodger should be criticized for expressing to Jones his opinion that the charge should not be proceeded with. It was because of Duke's boasting of influence with senior officers and the latter's attendance at the social functions that caused junior officers to think favouritism had been shown. If the person charged had been a complete stranger I doubt that there would have been any criticism of the manner in which this case was handled. I do not think that Rodger actually ordered the charge withdrawn. If he had done so Jones would not have told McConnell he could do as he liked. Jones must have known from his position in the office that the summons had not issued and the charge was therefore at an end. Why he would call the court in Hamilton to enquire about the case and the disposition thereof, as he says he did, is difficult to determine. In any event he filled in the named of the magistrate disposing of the case as "E. Fairbanks" although the latter had never known of the case and it was not on his list. He also quite improperly filled in the name of the crown as "D. Robinson" and the date and marked the record as if it had been drawn in court on that occasion. He admits he did not have any further instruction from Rodger or anyone else to do that. He says he did this on the word of a clerk in Hamilton as a result of his telephone conversation. He had not again spoken to McConnell or Rodger about the matter. Before making the notation above referred to, one would have expected him to do so or go back and ask Rodger about how the record should be endorsed. It would have been a simple matter to note thereon that the summons was never issued within the proper time because Superintendent Rodger had thought there was not sufficient evidence to warrant a prosecution. I regard Jones' evidence as less than candid. If he

had made the entries on the court docket to indicate the summons was not issued within the twenty one days because Rodger expressed the view that there was not sufficient evidence to secure a conviction, this would have been in accordance with the facts as I assess them. His failure to do so and the erroneous entries he did make have given rise to misunderstanding and unwarranted suspicion. On the other hand, there would have been no justification or occasion for such suspicion if senior officers in that division had been properly cautious and careful of their association with Duke.

In view of Duke's numerous highway traffic offences and his association with both Rodger and Wilson the former would have been more discreet to have laid all the facts before the Crown Attorney and act on his advice. If he had done so I am of the opinion that such official would have advised against prosecution.

In discussing the right of senior police officers to decide as to when the machinery of the criminal law should be put into operation, Lord Denning M.R. in the recent case of *R. v. Metropolitan Police Commissioner, Ex parte Blackburn*, [1968] 1 A11 E.R. 763 stated at p. 769:

> "Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police, or the chief constable, as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide; but there are some policy decisions with which, I think, the courts in a case can, if necessary, interfere. Suppose a chief constable were to issue a directive to his men that no person should be prosecuted for stealing any goods less than £100 in value. I should have thought that the court could countermand it. He would be failing in his duty to enforce the law."

INSTANCES WHERE INFLUENCE EXERTED ON DUKE'S BEHALF

Francis C. Harvey was a probationary Ontario Provincial Police officer stationed at Oakville in 1966. On October 3rd of that year he stopped a motor vehicle driven by Duke which he considered to be exceeding the speed limit. He issued and served Duke with a traffic ticket charging him at 75 miles an hour in a sixty mile zone. Shortly thereafter he was called in to see Sergeant Wilkinson who was then in charge of the Oakville detachment and was told that something was to be done about this charge. Wilkinson denies this. I prefer to accept the testimony of Harvey. When Wilkinson testified that he had no knowledge as to who had sent him the Christmas gifts on the various years, which clearly came from the Duke Company, I lost all confidence in his credibility. That was the last that Harvey heard of the case and it did not reach the Drivers Record Section of the Department of Transport nor was the case proceeded with in court.

Wayne A. Skelley was an Ontario Provincial Police constable stationed at Port Credit. On June 1st, 1968, while on patrol he clocked a motor vehicle driven by Duke on the Queen Elizabeth Way at 85 miles per hour. He issued to him a uniform traffic ticket charging him at 80 miles per hour in a sixty mile zone. Before the return of the ticket on July 22nd such officer was called into the office of Inspector Chaddock who was then staff sergeant in charge of Port Credit detachment. The latter advised he had received a call from someone asking that the charge be withdrawn and that Chaddock had refused to do so. The reason given was that Duke was transporting a firearm from Toronto to Oakville to Mrs. Robbie, the widow of the late Inspector Robbie. Chaddock said the only thing he could do was to have the charge reduced. The charge came up before Magistrate Rothwell on June 22nd, 1968, when the speed charged was reduced to 70 miles per hour and he was fined $10.00 and costs. Skelley concurred in this reduction. Chaddock testified that it was Inspector Wilson who had called him and asked such reduction simply as a favour rather than alleging that Duke was not guilty of driving at such rate of speed. Neither Skelley nor Chaddock knew Duke at that time.

William T. Ward is a constable with Stoney Creek police. He investigated the accident in which Duke was involved on October 3rd, 1968, and for which he was convicted of making an improper left turn and fined $25.00 and costs. During the investigation Duke mentioned the names of Rodger and Wilson but no one made any attempt to influence him to withdraw the charge or change the same in any way. At the trial the crown attorney prosecuted and Mr. Hennessey appeared for Duke, who did not appear but pleaded guilty through his counsel.

W. J. Watkinson is a constable with the Oakville Ontario Provincial Police. On October 27th, 1969, he stopped Duke after checking his speed and charged him with driving at 70 miles per hour in a sixty mile zone. Duke said to him, "I know your superintendent." This would be Wilson. He also said he supplied lawn equipment to the Ontario Provincial Police all over the province. The officer served him with a summons. He pleaded guilty and was fined. No one attempted to have the charge withdrawn or reduced.

J. L. Chamberlain is a constable with the Waterdown detachment of the Ontario Provincial Police. On June 9th, 1970, he investigated a one-car collision where the vehicle had been driven by the son Richard Duke with his father present as a passenger. The officer found the two of them in hospital. The officer consulted the crown attorney about laying a charge. That official advised there was no use attempting to get a conviction as the only evidence they had was the car went off the road. No influence was brought to bear on the officer by anyone.

On October 26th, 1969, Duke was involved in a two car rear end collision on the Bronte Road. Constable Kenneth E. Brooks who investigated the accident was under the impression that Duke was in an impaired condition. He requested Nelson Sherwood, a patrol sergeant with the Oakville Police, to conduct a breathalyser test on Duke. Duke said to him, "I will blow into it if you lower the reading." The officer replied, "You blow into the machine and I will give you the reading." Duke made this same reply to the officer's request on several occasions. Duke mentioned he knew the Commissioner. This assertion did not dissuade Sherwood from his duty. When it was apparent that the test would not be lowered Duke refused to take it. The latter was charged with impaired driving and also having liquor in a place other than his residence. Judge Clooney heard the case on February 19th, 1970. The evidence was all heard. Duke gave testimony to the effect that subsequent to the accident and before the officer's arrival he had consumed liquor. The Provincial Judge acquitted him of impaired driving but convicted him of having liquor in a place other than his residence and fined him $150.00. This is one of the cases referred to in the chapter captioned, "Duke's Driving Experience".

ROBERTS' PROMOTION AND TRANSFER TO MATHESON

Mrs. Citron testified that Mrs. Duke told her that she and her husband had attended the wedding of Inspector Wilson's daughter, Susan, on March 29th, 1968. Mrs. Citron quoted Mrs. Duke as reciting an incident at the wedding in which Wilson had come up to Duke, reprimanded him for quoting his name to the officer who had stopped him at an accident scene the week before, and admonished him never to use his name again but to call him up instead. According to Mrs. Citron, quoting Mrs. Duke, Duke asked whether there would be trouble for his having mentioned Wilson's name, and Wilson replied "no, I don't think so. We have sent him to Kapuskasing."

While there may be a remarkably close coincidence, the evidence does not bear out Mrs. Citron's narrative. In the first place, the accident a week before the wedding took place not in Stoney Creek, as Mrs. Citron reported Mrs. Duke to have said, but rather in the City of Hamilton. Both Roberts and McConnell, who investigated the accident, testified that at the accident scene Duke neither mentioned the names of any Ontario Provincial Police personnel he claimed to know, nor did he display his Ontario Provincial Police tie pin or cuff links. As for Roberts' transfer to Matheson (which on the evidence is about 85 or 90 miles from Kapuskasing), he was notified by letter dated May 27th, 1968, of his promotion from corporal to sergeant effective June 1st, 1968, and his transfer to the Matheson detachment, where a position for sergeant had fallen open. Roberts left the Burlington area on June 10th and arrived in Matheson on the following day. According to all of the evidence, this was a routine promotion and a transfer from one district to another, when a vacancy occurs, is not unusual. When Rodger, not Wilson who appears to have had no connection with this aspect of the inquiry, was asked whether he was consulted about Roberts' promotion and transfer, he indicated that it would not be normal that he be asked and that he was not consulted.

While Roberts did not like the inconvenience of being transferred to the north he accepted it as one of the disadvantages associated with his

work. He never in any way connected such transfer with his investigation of the Duke collision nor think that the same was other than in the normal placing of officers at time of promotion. His move would not be directed by either Wilson or Rodger but rather by the Commissioner's Committee because it was a transfer out of the district and he was at a point on the list where he was due for a promotion. The Commissioner's Committee had not been approached by either Wilson or Rodger in connection with such transfer. Roberts was notified of his promotion and transfer on May 27th. He reported for duty at Matheson on June 10th. There could be no reason for sending Roberts away from that district at such a time because it was then sixty days subsequent to the collision and the charge could not then have been revived. Duke would have no reason to bear animosity against either Roberts or McConnell at that time as he had not been charged. Investigating officer McConnell who knew more about the facts of the case continued to remain at Burlington and is still there. Roberts had never been aggressive in his approach to the case and was not concerned with it and did not even know what had become of it after he had left. When his superior officer Rodger on March 29th asked him for information concerning the details of the collision he gave him what information he had. He assumed such officer was only seeking information in respect thereof because no indication was given to him that the charge should not be proceeded with and no pressure brought to bear on him. The suggestion that Duke had brought some weight to bear in connection with Roberts' transfer is entirely without foundation. There is not the slightest evidence or circumstance which would support such an allegation.

KNOWLEDGE OF DUKE'S RECORD REACHING ONTARIO PROVINCIAL POLICE OFFICERS

As heretofore related Duke's early criminal record had reached the records branch of the Ontario Provincial Police on July 24th, 1967. Charles G. Wilkinson is an inspector of the Ontario Provincial Police now stationed at Chatham. He was in No. 3 District from 1956 to 1967 and rose from corporal to staff sergeant while there. On March 19th, 1968, he was stationed at Niagara Falls. On that date he was in Toronto attending a lecture in general headquarters on administrative filing. At the noon hour he and Superintendent Wilson visited the registrar of firearms section and talked to Sergeant Dawson who showed him the new filing system that was being developed in that branch. During their discussion Wilkinson said that Duke should have quite a file to include all his gun registrations. To this remark Dawson stated that Duke had a criminal record and then produced it for their inspection. Both officers were surprised as they had no knowledge prior to that of such record. Dawson is now deceased. Rodger was Superintendent in No. 3 division at the time and Wilson's senior officer. Wilson did not report finding such record to anyone unless it be to Rodger. He was of the thought he had told Rodger but in the face of Rodger's denial he is now not prepared to swear to it. Wilson's daughter was married on March 29th of that year. The invitations to the wedding had gone out sometime previous to March 19th. Duke and his wife were among the guests invited and had sent their wedding gift. Commissioner Silk was also invited to that ceremony. Wilson did not tell him of what he had found out about Duke. Inspector Wilkinson was the master of ceremonies at the reception but he did not tell any senior officer of what he had located in respect of Duke's past. Other officers at the wedding were Whiteley, Graham, Robbie, Garry, Wood, Rodger, Wilkinson and other Ontario Provincial Police personnel.

Assistant Commissioner Harold Graham is in charge of the administrative division of the Ontario Provincial Police. He assumed such role on June 1st, 1970. Previous to that he had been Assistant Commissioner in

charge of the special services branch. While inspector of the criminal investigation branch in 1953 he was investigating an armed robbery of two fur merchants in the Oakville area with the assistance of Corporal Kersey of the Oakville detachment. At that time Kersey told him that Clinton Duke, whom he described as a responsible business man, had a criminal record in the United States. He thought the conviction was for bank robbery. This was a conversation that had nothing to do with the offence then being investigated. There was no suggestion that Duke had any connection whatever with the fur robbery. Graham never had occasion to think of the matter again until the night of Wilson's daughter's wedding on March 29th, 1968. At the reception Graham asked Wilson as to the identity of a guest and was told "that is Clinton Duke the lawn mower man". Graham then said, "Oh, is that the man with the record in the United States?" Wilson said, "That is the man. I have just learned about it. I have gone down to the records branch and confirmed it." He did not give Graham any particulars of the record.

The following morning about 6 a.m. Inspector Robbie was killed on the highway. The funeral was at Dunnville. Silk, Whitty, Rodger, Wilson and their wives went to the funeral. After the ceremony they were invited to drop in to the Duke home on their way back to Toronto. Silk's invitation came through Wilson. Silk inquired of him, "Who are the Dukes?" and upon being reminded asked Wilson, "Is it all right?" The latter replied, "Yes, I think you should." They did drop in, have refreshments and saw through the home, the bomb shelter and the display of guns. There was no one else there except Mr. and Mrs. Duke, their maid, the Commissioner, such three officers and their wives. When leaving Duke gave each of his guests a brass letter opener and in return Silk gave to Duke an Ontario Provincial Police tiepin of a value of probably fifty cents. He also invited Duke and such officers to a luncheon at the Engineers Club in Toronto a week hence and Mrs. Silk at the same time invited the wives to a luncheon at her home the same day.

Graham went to the funeral with Assistant Commissioner Neil, Deputy Commissioner Trimble and Staff Superintendent Grice. On the way to the funeral Graham recalls he told Neil that Duke, the lawn mower chap, was at the wedding and they talked about his record. Graham formed the opinion that Neil knew of it. Neil said Duke had a large gun collection and that the Ontario Provincial Police did business with him and that he sold good equipment. Neil does not remember such conversation. Chief Inspector Pettigrew who was in charge of the weapons registration branch is now seriously ill and could not attend to give evidence at this inquiry. However he did give a statement in which he says in July 1967 when he received Duke's criminal record from the Royal Canadian Mounted Police he had turned it over to Neil. Neil does not remember this either. He was near retiring age but because of illness has retired voluntarily. Neil is a very honourable person and has been very faithful and careful in his

purchasing of equipment through his years in office. Many of his purchases were from the Duke company. I think he has honestly forgotten about the fact that he once was told that Duke had a record. It may be that the offence was committed so many years ago that it did not make an impression on his mind. Graham is a very honourable and capable officer and his recollection is more apt to be correct in the matter. Pettigrew as well is of opinion he had turned the record over to Neil. In any event it makes little difference whose recollection is correct because neither of them knew that Commissioner Silk and other officers were being invited to the home on April 2nd, 1968, or that Silk was having Duke to a luncheon the following week. Neither of them was aware that the fact he had an old criminal record was of any moment at the time. They had no reason to disclose that they had learned a successful business man had a criminal record which he had earned twenty-five years before unless there existed some situation which required them in their office as police officers to report upon. Graham did not know Duke. When he saw him at the wedding he had no knowledge of the extent of his association with Wilson or Rodger.

ASSISTANT COMMISSIONER NEIL

Assistant Commissioner Neil retired at the end of May, 1970. He had been in charge of the administrative division of the force and as such was responsible for the equipment used for maintenance of property, such as lawn mowers, snow-blowers and other equipment. He attended Lawn-oramas at the Duke premises as he would be expected to because of his responsibility in purchasing. The unchallenged evidence is that he was a very careful man in the administration of the force's funds. When any quantity of equipment was required he secured quotations from others but because of the exclusive franchises that Duke had on some lines the greater quantity was secured from that company than from others. He received the Christmas gifts above related. I am convinced, in his case, the receipt thereof would not influence him in any way in his purchasing. The material he purchased was of good quality and at a reasonable price. There was no indication that Duke exerted any influence over Neil in such purchases.

COMMISSIONER ERIC SILK

Eric Hamilton Silk was appointed Commissioner of the Ontario Provincial Police on March 1st, 1963. Prior to that he had been Associate Deputy Attorney General of the province from the year 1957. He is a graduate of Osgoode Hall and a Queen's Counsel. He had no experience as a police officer prior to his appointment as a commissioner. The first opportunity that Silk had to meet or know anything about Duke was at a Christmas party given by Whitty at his home in 1967. This was an occasion when guests called and left at varying hours. I am certain that they did not become acquainted on that occasion. The first time he actually met Duke was at the Wilson wedding on March 29th, 1968. The Dukes came and sat at the table at which they were seated with a number of other people for a short time at the reception. They had little association then because Silk had to ask who the Dukes were when Wilson told him they were invited to call in on their way back from the Robbie funeral at Dunnville. Silk was discreet enough to enquire from Wilson whether it was all right to go to the Duke home and was told that he should go. I am satisfied that he had no knowledge then of Duke's criminal record or his driving problems or anything to his discredit. Duke is well spoken and well groomed. When sober he portrays none of the characteristics that would warn one to refrain from association with him. Silk recognized that he was a friend of a senior officer in No. 3 division and felt that he should return the hospitality by inviting the group to lunch on April 9th. Nothing out of the way took place at such luncheon or at that given by Mrs. Silk for the ladies.

On August 27th or 28th following, while senior officers of the force were discussing the Duke home, one of them said in Silk's presence, "Did you know he had a criminal record?" This was a shock to Silk. He investigated immediately and checked on photographs attached to the record for the purposes of identification. They had been taken many years ago and at first sight one could not be certain that it was Clinton Duke. The record was on Royal Canadian Mounted Police stationery. Further investigation

was made and on the morning of August 29th Silk was assured it was the same person. A senior staff meeting was being held later that morning. Present were Commissioner Silk, Deputy Commissioner Trimble, Deputy Commissioner Whiteley and Assistant Commissioners Bird, Graham, Neil, Needham, Whitty and J. W. Harding the Personnel Director. At the end of the regular business Silk brought up the question of future association of Ontario Provincial Police personnel with the Duke equipment sales organization. After considerable discussion Silk made it clear that all social contacts of personnel of the force were to cease at once with Duke but this was not to affect business dealings between the force and the Duke company. Assistant Commissioner Bird was instructed to convey that direction to District No. 3. It would ordinarily be the duty of Bird as assistant commissioner of the field division to convey the Commissioner's orders on to district headquarters as the chain of command in the Ontario Provincial Police goes through the field division. Mr. Harding, who was the secretary of such meeting, made the following notes as to this matter:

> "Commissioner Silk also suggested after considerable discussion it is not desirable to have social contacts between our personnel and the Duke equipment sales organization. Assistant Commissioner Bird indicated he would advise District No. 3 personnel through the Superintendent."

Counsel on behalf of Rodger suggested that such recordings of the minutes indicated the reference to further association with Duke had only been a suggestion and not a direction. Silk says that the minutes as recorded reflected the mild manner in which Mr. Harding would record such a matter but that he made his purpose and message clear and that it was to cover all persons in the force. He says he never thereafter qualified his order or direction by permitting a tapering off rather than an immediate cessation of social contact with Duke. It was understood the message because of its nature would be conveyed by word of mouth rather than in writing. Silk says because of Duke's apparent rehabilitation he did not want to interfere with him any more than need be. Subsequently when Wilson was in his office Silk enquired of him and he assured the Commissioner that he was observing the order although he commented it was a pity that a man who had rehabilitated himself had to be treated in such a manner.

Bird says he immediately telephoned Rodger and conveyed the direction of the Commissioner making it clear that all association with Duke was to stop at once and he was to convey that order to his men. Graham confirmed it was an order and that Bird was to call Rodger at once. Whiteley says the Commissioner was adamant in his direction that personnel sever social association with Duke forthwith. Whitty says that the instructions were that they should not have any more dealings socially with Duke and that Bird was to transmit these instructions to No. 3 District. Whitty later talked the matter over with some of his colleagues and he says

they thought it was rather harsh treatment on Duke and that the association should taper off gradually. He approached Silk with such idea but the Commissioner disagreed with him. Without any authority from Silk Whitty thereafter suggested to Wilson that he drop in for a short visit to the Duke residence at the coming lawnorama and make his presence known and then leave. He made it clear he was not giving him an order. Wilson agreed with him that this course should be followed. In justice to Whitty he regarded Duke as entirely rehabilitated and knew nothing of his other misbehaviour. He now realizes he was entirely wrong in giving such encouragement to Wilson. In 1968 the Duke Lawnorama was held on September 10th. Wilson had received the message from Rodger to the effect they were not to socialize with Duke because of his record. Later Rodger received a message from Whitty that one of them should make a brief appearance at the lawnorama. Before going he, Wilson, received a call from Whitty who said, "I understand you are the one who is going to the lawnorama". He replied he was and Whitty then said, "If he asks where I am tell him I was called out of town and had to go to Ottawa." Wilson attended that lawnorama as did Wilkinson and Corporal Bell. Wilkinson was then stationed out of District No. 3 and may not have heard of the Commissioner's order. Bell went over to drive his wife home as she had been assisting at the occasion and his attendance should not be regarded as disobedience because there was no socializing on his part. Later in the season both Rodger and Wilson and their wives with Mrs. Robbie attended the Duke Barbeque. Wilson's request of Inspector Chaddock that he reduce the speeding charge against Duke on June 1st, 1968, amounted to interference with another officer's course of duty. To put it on the basis of a personal favour to himself indicated there was no justification for his request. He had knowledge of Duke's continued driving infractions and his pretence of influence with senior police officers but made no attempt to refute the same. His associations with Duke served rather to lend weight thereto. He misled Silk in advising him to accept the invitation to the Duke home on April 2nd, 1968. He was responsible for the Commissioner's association with Duke on that and the luncheon the following week. His failure to warn his superior officer of Duke's criminal record and pretensions was unforgivable. He apparently thought that his relationship with Duke was more important than the duty he owed the force. His continued relationship with the latter after contrary instructions is evidence of his utter lack of appreciation of his responsibilities as a senior law enforcement officer. Rodger and Wilson have to face charges laid against them under the Police Code of Offences and because they shall have to answer to and be dealt with by that tribunal I shall not further enlarge upon their actions in this matter.

Chief Lawrence of Hamilton was at a police meeting in Evanston, Illinois, U.S.A., on July 16th and 17th, 1968, in his capacity as president of the International Association of Chiefs of Police. His investigations on

behalf of Mrs. Duke had brought to his attention that Duke claimed to have influence with Ontario Provincial Police in District No. 3. He decided to inform Commissioner Silk that the close association between Ontario Provincial Police officers in that district and Duke was detrimental to proper law enforcement in the area. From Evanston he wrote a letter dated July 16th in longhand to Commissioner Silk expressing such concern. The latter never received that letter. There can be no doubt that Chief Lawrence did write the letter and one can be equally sure that it was never received by Silk. The dispatch with which the latter acted when he heard of Duke's criminal record on August 27th of that year proves that he would have been concerned and acted on the information contained in such letters at once. The explanation must be that there was a postal strike in Canada from July 18th to August 7th of that year. The practice of the United States post office was to refuse to accept letters for delivery to Canada when such a mail strike was in effect here and if such a letter was posted without a return address in the United States it would be turned over to the dead letter office. In August of this year Chief Lawrence asked Silk if he had received such letter and was told it had never come to his attention. On December 9th, 1969, such officers were at a meeting together and then Chief Lawrence advised Silk that he had conducted an investigation sometime earlier to ascertain if there was an association between Papalia and Duke but he was not able to determine any such association.

By inviting Duke to such a luncheon attended only by senior personnel of the Ontario Provincial Police Silk was clothing him with approval. It was a public endorsement of him as a friend of police officers. Such distinction ought not to have been bestowed on Duke until the Commissioner knew him well enough that he could be certain the association would not at least be detrimental to the force. It is true that he was misled by his own officers and the Dukes' apparent affluence and hospitality but discretion ought to have warned him against displaying such receptiveness so soon after their first meeting.

Silk never attended a party at Duke's home as late as December 11th, 1968. The only occasion that he had ever been at such premises was when he was there with Wilson and other officers on April 2nd, 1968.

THE INVESTIGATION OF RUMOUR

The following matters were related during the course of the hearing and they have sufficient relevancy to the matter being investigated that I should comment thereon.

In her evidence at this inquiry Mrs. Citron related that Mrs. Duke had made certain statements to her. One was that Wilson and Rodger as well as the late Inspector Robbie had occupied a suite or rooms reserved by Duke in a Montreal hotel during 1967 Expo. Such allegation has been canvassed thoroughly. Not only is there no evidence in hotel registrations to support such statement but all the evidence establishes that it is not true. Mrs. Duke would certainly have known if such was the case. There could have been no reason for her to make such a statement to Mrs. Citron if it were not true. At best it is but a figment of Mrs. Citron's imagination.

She also stated that at the wedding reception on March 29th, 1968, she had heard Wilson chastise Duke for showing his Ontario Provincial Police tie pin and mentioning his name to the police officer at Stoney Creek who had been investigating the collision in which Duke was concerned. This testimony was of some moment because it would indicate knowledge on the part of Wilson that Duke was abusing his acquaintance. The clear testimony is that Duke did not get the tie pin in question until the day of Robbie's funeral which was on April 2nd following. The date of the accident at Stoney Creek was the following October 3rd. It is true that the Stoney Creek officer who was Constable Ward stated that Duke had mentioned the name of Wilson and Rodger to him during the investigation. Mrs. Citron may have learned of this in some other way subsequent thereto and then probably erroneously associated it with the Wilson reception on March 29th. If she was confused and was referring to the Roberts transfer to Matheson rather than Kapuskasing that as well did not occur until later in May.

Another statement attributed by Mrs. Citron to Mrs. Duke was that there had been a gift of a lawn mower or other equipment to Wilson or Rodger. The evidence discounted this entirely.

There was also a statement that Wilson was brought back to Burlington from London through Duke's influence. It is possible that Duke may have so stated to Mrs. Citron but the evidence is clear that his initial move to London was only intended to be a temporary one and that it was always intended he should be brought back to District No. 3 when the purpose of his temporary transfer to London was satisfied. Silk says that the suggestion that Duke influenced Wilson's return to No. 3 District is without any foundation.

In 1967 there was a meeting of the Ontario Association of Police Chiefs at Honey Harbour. Assistant Commissioner Whitty asked Wilson if he could get some donations as door prizes. Wilson did get a donation of a power lawn mower from the Duke Lawn Equipment Company Limited. This was the only firm that Wilson received a donation from for this purpose. As Duke says that he gave many articles away for the purpose of advertising, and this was only another case of that, it probably is of no particular significance. Duke was selling a lot of equipment to the Ontario Provincial Police and probably felt obliged to make such donation. On the other hand it is some indication that Wilson was friendly enough with Duke that he could make such a request of him and receive the gift.

In 1969 Duke made a donation to the Ontario Provincial Police Softball Team that was playing in a local league at Burlington. As a consideration for this and purely as an advertising promotion the name of the Duke Lawn Equipment Company was printed across the back of the sweaters. The arrangements in respect of this were made by junior officials of the force who no doubt thought it was a good way to assist in the financing of their team and at the time did not realize that such practice might lead to possible suggestions of favouritism. In the following year when this was recognized, the ball team had the name taken off the sweaters.

THE CITRON AFFAIR

Jeffrey Citron is a high school teacher now teaching in Hamilton. His wife Elizabeth Margaret Citron is a dress designer and milliner. In this vocation she has marked ability. She carries on her business in her home on Old Waterdown Road in Burlington. They are about 40 years of age and came to Canada from Ireland in 1965. They have a daughter Rosaleen who is 15 years of age attending school and who lives with her parents. In 1966 Mrs. Citron began making dresses for Mrs. Duke. They became close and intimate friends. They visited back and forth frequently. She attended the Duke barbeque in 1966. On Mrs. Duke's invitation she became a member of the Zonta Club of Burlington and met many of Mrs. Duke's friends. Aside from the personal satisfaction of being a friend of such a prominent lady it was good business for her to have it known that she created the smart attire worn by Mrs. Duke. Mrs. Citron had a small birthday party for Duke on December 31st, 1967, and later attended a dinner party at the Dukes. Mrs. Citron says in 1968 Mrs. Duke confided in her and told her of serious marital problems and infidelity on the part of the husband but is alleged to have said there was no use in her going to the Oakville or Burlington police because of Duke's influence with them. Mrs. Citron did not keep these confidences to herself. The result was considerable gossip developed about Duke. He became very bitter towards Mrs. Citron. The reason for such ill-will appeared to be the rumours that developed and which he attributed to Mrs. Citron. He was very opposed to his wife associating with the latter and in his testimony at this hearing stated that he considered she was not good company for his wife. If by this he meant to impute immoral conduct to her he was not justified in so doing. He is not one entitled to make such suggestions. If he meant that her companionship with his wife contributed to a deterioration in his wife's attitude to him he may have been quite justified in coming to that conclusion. Mrs. Citron states herself that on one occasion she asked Mrs. Duke if the latter would divorce her husband.

On September 1st, 1969, about midnight Duke came to the Citron premises in his motor vehicle and said he was looking for his wife. She was not there at the time. He was very abusive, using foul language. She says he had a gun which he pointed at her forehead and threatened to kill her. Duke denies this but I am convinced he did so because when Mrs. Citron told of the incident in police court he did not deny it but rather let it be said that it was only a starter's pistol that he had. Mrs. Citron says she remained outside the home arguing with Duke between one and a half and two hours. Her husband who was in bed was not awakened. The daughter came out and saw the gun incident but no steps were taken to call the police that night. I conclude that Mrs. Citron could not have been unduly frightened by these threats or she would have run inside or called for help. It should be remembered, however, that at this time she had no knowledge of Duke's criminal record other than some of his traffic offences. Her first knowledge as to his earlier criminal offences was that supplied by the Oakville Daily Journal Record in its issue of December 23rd, 1969. Mrs. Citron told her husband of the incident when he came in from work the following day. They then complained to Duke's stepson Richard. He came up to the Citron home and discussed the matter. There was no animosity against him. Mrs. Citron poured him a drink but he did not participate of the same: rather he poured it down the sink because he thought it would be less impressive if he rebuked him for what he had done while there was liquor on his breath. Richard decided that he should bring his father up to the house. This was done shortly thereafter. When Mrs. Citron had told Richard that Duke claimed to have influence with the police officials the son said "he can't have influence over a matter like this". "He might be able to fix a speeding charge but nothing like this." When the father came up they discussed the matter. Duke then apologized to the Citrons and promised to stay away from their premises thereafter and they agreed not to tell Mrs. Duke as to what had happened. As a result of this promise the police were not consulted. The effect of the discussion was in fact a settlement of the matter between them. I do not think the parties thought they were compromising a matter of a criminal nature. The interview ended by Mr. Citron saying to Duke, "Clinton, you were always welcome in this house – and you are still welcome provided you behave yourself – but I can't have my wife frightened by you and you phoning and driving up and down the road. I am not going to put up with it – you can say you can't remember what you do, do you think you are a fit person to carry a gun around?" Mr. Duke agreed he was not fit to carry a gun. Dick Duke said all this was due to drinking and the father said he would cut down. Dick said he would have to cut it out completely and give his word he would not come near the house again and that he would leave the Citrons alone. He gave his word to abide thereby. Mrs. Citron says that despite his assurances Duke did on an occasion shortly thereafter come back at night and bother them by driving near the house

with the lamps of his vehicle unlighted. Her husband told her not to bother and to pay no attention to him. On October 13th Mr. and Mrs. Citron were invited out to a friend's for dinner. Mrs. Duke went along with them. After midnight Duke called on the telephone and was abusive. Later the same night Mrs. Duke called and said her husband had thrown her out of the house and that he was on his way up to the Citron home with a gun. The Burlington police were called by the Citrons immediately and two officers came to the home without delay and stayed on guard until near morning. They were then told of the September 1st incident. Such officers advised the Citrons to see William E. Daniels the Justice of the Peace for advice as to what charge might be laid against Duke. The Citrons admit that on this occasion the Burlington police were most helpful and co-operative and answered the call immediately. Duke, however, did not show up near the Citron home on that occasion.

Mrs. Citron then went to see the Justice of the Peace as recommended. The complaint she made to Mr. Daniels was in respect of the September 1st incident. Duke could not very well be charged for what had transpired in respect of his telephone call the previous evening because on that occasion there was no indication he had made any threats and he had only accused Mrs. Citron of association with his wife. He said that Mr. Citron was making dates with Mrs. Duke. This made Citron very angry and he hung up the telephone. Mrs. Citron told Mr. Daniels that she wanted a charge laid because she was getting quite concerned about her safety. She didn't care which charge was to be preferred so long as the result would be to force Duke to stay away from the Citron residence. Such Justice of the Peace asked why she had taken so long in coming to the office to prefer a charge and her reply was that he had threatened her if she made any complaint that he would do harm to her in some way. Mr. Daniels mentioned that there were several charges that could be laid against Duke but he was concerned about the delay in making the complaint of such incident. As was his custom he procured a police report to verify the facts that had been given to him by Mrs. Citron. The officer who had attended on the night in question was Murray Eaton, a constable in the Burlington police force. The Justice of the Peace procured his report, which is Exhibit 13 herein, and later Clare D. Richardson, a sergeant with such police force took the matter over on October 17th. He attended with Mrs. Citron on October 20th to get a more complete statement for Mr. Daniels. He also interviewed her on October 23rd and she was then asked to write out a full statement describing the incident involving Mr. Duke. Mrs. Citron completed such statement and the officer secured it from her on October 28th. It is in her own handwriting, totals eleven pages and is Exhibit 9 herein. Mr. Daniels asked Mrs. Citron to let the matter stand until after he had had the benefit of advice from the local crown attorney as to what charge to lay. He then contacted Mr. Douglas V. Latimer, the Crown Attorney for the County of Halton and explained the circumstances

and the reasons for the delay in the complaint. Such Crown Attorney recommended that a charge of threatening be laid under s. 717 of the Criminal Code, which reads in part as follows:

> "717. (1) Any person who fears that another person will cause personal injury to him or his wife or child or will damage his property may lay an information before a justice.
>
> (2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.
>
> (3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for his fears,
>
> (a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, or
>
> (b) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance."

Acting on such advice an information was sworn out by Mrs. Citron before such magistrate on October 23rd in the following form:

> ". . . that George Clinton DUKE on or about the 1st day of September in the year 1969, at the Town of Burlington in the County of Halton did threaten the complainant Elizabeth Citron in the following words or to the effect following, that is to say he threatened to shoot the complainant and pointed a firearm namely a revolver at the complainant's forehead, and that from the above and other threats used by the said George Clinton Duke towards the said Elizabeth Citron, she the said Elizabeth Citron is afraid the said George Clinton Duke will do her some bodily injury and therefore prays that the said George Clinton Duke may be required to find sufficient sureties to keep the peace and be of good behaviour towards her, the said Elizabeth Citron, and the said Elizabeth Citron also says that she does not make this complaint against nor require such sureties from the said George Clinton Duke, from any malice or illwill, but merely for the preservation of her person from injury, contrary to Section 717 of the Criminal Code of Canada."

Such Justice of the Peace in the first instance prepared a warrant to arrest Duke but this was not acted upon as the crown attorney was of the opinion that a summons would suffice to ensure the attendance of Duke at the court. It was suggested that the fact that such warrant of arrest was not executed was proof of special consideration for Duke by the police officers or crown officials. Such, however, is not the case. The crown officials could have been severely criticized if an accused in such a case

had been arrested. The only penalty that can be enforced under such section in the first instance is that the accused be ordered to enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months. If an accused fails or refuses to enter into the recognizance directed by the court, however, he may then be committed to prison for a period not exceeding twelve months. Duke was a wealthy businessman and resident of the town and there could be no doubt but that he would appear in court on the strength of a summons. The purpose of issuing a warrant directing the arrest of an accused and lodging him in gaol is only to ensure his attendance at the court or if his condition is such that he may do serious harm to someone in the meantime or absent himself from the country.

Douglas V. Latimer was appointed Crown Attorney for the County of Halton on September 15th, 1968. He had been called to the Ontario Bar in 1957. He has one full-time assistant and eight part-time assistant Crown Attorneys who may practise law generally and who are called in to prosecute cases as needed. His work load is very heavy. He will prosecute about 200 cases a week and his deputy will handle probably the same number. As Crown Attorney it is his place to advise the Justices of the Peace when requested so to do. Mr. Daniels had phoned him as to what he should do when Mrs. Citron came in to lay the charge. He had been uncertain about taking the information because such complainant had delayed coming to him until forty-three days after the alleged offence. The Crown Attorney asked what Mrs. Citron wanted and was advised by such Justice of the Peace that Duke had threatened her with a gun and all she wanted was that Duke be kept away from her. He advised the Justice of the Peace that under those circumstances the proper charge would be under s. 717 of the Criminal Code. He said he considered as to whether s. 316(1) of the Criminal Code was appropriate. That is a section which creates an offence where one conveys or causes another to receive a threat to cause death or injury. That is a case which is only within the jurisdiction of a Supreme Court Judge and jury. Latimer came to the conclusion that on the facts of this case there was no chance of conviction being registered under that section.

The charge came on for hearing at the Police Court in Burlington on October 31st. The Provincial Judge was told it was a private complaint. Mr. Ernest R. Hennessey asked for a remand to November 21st and such adjournment was granted on consent. It is a matter of course that adjournments are granted when requested when the case first comes before the court. Mr. Latimer had advised that a summons would suffice to secure the attendance of Mr. Duke. Mrs. Citron and her husband were present and were advised of the request for the adjournment and had no objection thereto.

In the evening of November 20th Mr. Hennessey the solicitor for Duke and son Richard went to the Citron home for the purpose of arranging

some solution which would prevent the publicity of a trial. Hennessey suggested that Mrs. Citron drop the charge if Duke assured her there would be no repetition of the incident of September 1st. She was not willing to do this. He pointed out to her that the only outcome of the case could be that the court would order Duke to stay away from the Citron premises and that a bond would be required from him for that purpose. He explained the nature of the charge to them and finally suggested that they should all meet with the Crown Attorney in the morning before court to discuss a possible arrangement. I have no doubt that Mr. Hennessey thought it would be in the best interests of not only his own client but also of Mrs. Duke and the Citrons that the case should be heard in private to avoid publicity of the incident.

Mr. Hennessey volunteered the information to the inquiry to the effect there was no impropriety in so approaching Mrs. Citron and that it was done by him many times. This causes me to point out that his attendance was very different from that of a solicitor interviewing a witness who may be called by the other side. His object was to cause her to withdraw the criminal charge that had been laid. In my opinion his attendance and attempt at such persuasion were very improper but fortunately she would not accede to his request and no harm came therefrom.

On November 21st both such counsel were in the police court. Mr. Latimer had received from Sergeant Richardson the statement which Mrs. Citron had made out. He was very busy that morning as there were some fifty cases on the docket. However he took out time to discuss the matter with both Mr. and Mrs. Citron in his office at their request before the court opened. He had not known them before. He says they both seemed sincere and concerned. Mrs. Citron outlined some of the facts and particularly her family relationship with Mrs. Duke about whom she appeared to be most concerned. Mr. Latimer felt that no other charge could succeed because of the failure to report the incident sooner and also because of the settlement made between the parties on September 2nd. Mrs. Citron impressed upon the Crown Attorney that she did not want to cause anybody any trouble but her main concern was to keep Duke away from her premises as well as her concern that Mrs. Duke would not be embarrassed by the proceedings She expressed to Mr. Latimer her fears that Duke had undue influence with police officials but he assured her that such was not the case and that a full and proper hearing would be given by the Provincial Judge in the court. He told her that in all probability the judge would place Duke on a bond to keep away from her home and that he could be imprisoned if he disobeyed the terms of the bond. Mr. Hennessey was then called into such office and in the presence of Mr. and Mrs. Citron Mr. Latimer expressed the opinion that Duke should be compelled to put up a bond in accordance with s. 717 of the Criminal Code for the protection of Mrs. Citron.

In such court private complaints are usually put at the foot of the day's list. There was a class of school children attending that court as part of their curriculum. There were many obscenities in the statement given by Mrs. Citron attributable to Duke. It was thought the class would probably leave before the case was reached if it were put towards the bottom of the list and this was done. On further consideration and without suggestions from anyone else Mr. Latimer thought this might be a suitable case to be heard in the Family Division of the Provincial Court. He then asked Mr. Hennessey to see Judge Langdon with him. He then apprised such Judge of the facts which prompted him to suggest a Family Court hearing. These were the following:

> (a) there had been a lengthy period of time between the offence and the first complaint to the police, namely, from September 1st to October 13th;
>
> (b) the parties had actually solved the incident of September 1st between themselves on the following day;
>
> (c) Duke's allegations that there was an affair between Mr. Citron and his wife was a matter which could affect the relations between Mr. and Mrs. Citron;
>
> (d) the relationship between Duke and his wife might be improved if their grievances were not aired in open court;
>
> (e) Mrs. Citron was very concerned that Mrs. Duke should not be hurt or embarrassed by the publicity attending the trial;
>
> (f) Mrs. Citron was only desirous of an order directing Duke to stay away from the premises.

Judge Langdon had experience of twenty-seven years on the bench and was experienced in family matters and Family Court procedure. He indicated that family court would be the proper jurisdiction. The Provincial Courts Act, s.o. 1968, c. 103, provides that a provincial judge appointed under the Act should have jurisdiction throughout Ontario *inter alia:*

> "9. (c) subject to subsection 2, may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;"

It leaves some question as to what cases should be disposed of in the Family Court.

A directive went out from the Department of the Attorney General under date of February 17th, 1967, directed to all magistrates, crown attorneys and juvenile and family court judges, stating as follows:

> "In order that the practice throughout the Province may be uniform, I shall be glad if you will co-operate in seeing that charges under the

following provisions are brought before a Judge of the Juvenile and Family Court in his capacity as Magistrate;

6. Section 717 Criminal Code – sureties to keep the peace."

The directive went on to say:

> "I understand this practice is being followed in many of the Counties and Districts at the present time."

When court resumed after the morning recess the case was spoken to in open court by Mr. Latimer. He then said that proper disposition could take place in the family court and asked that it be set to be heard on December 17th. Mr. Hennessey agreed to this and Judge Langdon then endorsed on the back of the information the fact that it was transferred to such court to be heard on December 17th. An officer of the court explained to Mr. and Mrs. Citron that the case was transferred and they were then allowed to leave.

While there may be jurisdiction to try a case laid under s. 717 of the Criminal Code in the family division of the provincial court when the summons is issued from that court, there is however a real question whether the provincial judge has the right to transfer the hearing from criminal division to the family division. The information taken by the complainant in this case was not styled in any court but the summons issued by the justice of the peace undoubtedly had been issued as one directing him to appear in the criminal division of such court. In any event the consideration is academic as Judge Langdon would have presided over the matter in either court and the result would have been the same except that there is a practice that family court cases are heard with the public excluded. The family division of such court in the County of Halton sits only at Milton. Both Mr. and Mrs. Citron were aware before the 17th of December that the case would be heard in a private court and neither of them objected thereto prior to or at the hearing and were quite content with the way the proceeding was handled.

I can find no criticism of Mr. Latimer in his handling of this case. He honestly thought it was in the best interests of both Duke and Citron's family that the case be heard in the family court and in the manner that it was disposed of. He made his submissions to Judge Langdon who agreed with him and who made the order as to where it was to be tried. He did not know of Duke and had no knowledge of his criminal record. If he had been told thereof I am convinced he may have caused further investigation to be made and probably caused a more serious charge to be laid. At the trial he insisted on Mrs. Citron giving her testimony before the court. He had seen the statement that she had written out in her own hand as to the events of September 1st. But for his request the case would have passed off as a plea of guilty without Mrs. Citron having the opportunity of giving her evidence. No one had approached either Judge Langdon or himself to

deal with the case in such manner or to ask any favour for Duke. Mrs. Citron now complains that he did not have her case prepared but she has no right to so state. Handling her case was outside his regular duties. She ought to have engaged her own solicitor in the first instance but having taken on the responsibility of presenting her case as crown attorney he did everything that could be expected of him and achieved the exact result that Mrs. Citron indicated that she wanted. He is a very capable and conscientious crown attorney. In the County of Halton where the population has greatly increased in the last few years the number of criminal cases has increased in proportion. His task is very demanding and the citizens of that county are fortunate to have one of his integrity and ability in the important position of crown attorney.

Mrs. Citron's evidence in court on December 17th was as follows:

> "Q. Mrs. Citron, I understand that you are actually you and your husband are good friends of Mr. Duke's wife. Is that correct?
>
> A. Yes.
>
> Q. And I understand that they are separated. Is that correct?
>
> A. No, no, they are not separated.
>
> Q. I'm sorry, but I understand at present Mr. Duke feels that unjustifiably that you have influence upon his wife or something and this is why he has perhaps carried out the acts that he indicated to you?
>
> A. What I would like to know why this man hates me so much."
>
> Q. Would you tell us what happened that particular night very briefly on September the 1st?
>
> A. Well, I have it in my statement. I was going to bed and he came up the drive and I put the lights on again and I went down because each time as I had met Mr. Duke I have been pleasant to him. I've never been rude. I've pretended that we are friends even though I hear he says things about me and but he has never said them to my face so I can't pretend any other ways just that we're friends and he asked me where his wife was and he was going to kill her and he had the gun in his hand on the steering wheel and he rolled . . . he rolled the window down by this time. I said I don't know where your wife is and he said I'm going to kill her. She won't get out of my life.
>
> Q. Had he been drinking?
>
> A. No, he was not drunk, Mr. Latimer. He wasn't. I've seen this man when he's had drink taken. He speaks very quietly, but he was shouting and screaming at the top of his voice and he called his wife filthy names and I stood up for her and said she's not that and he pulled me towards the car and stuck the gun in my face and then my daughter came to the door and he said if you don't get her in, I'll kill her too, and I kept telling my daughter to go in. Anyway you have it in the statement there, but why the persecution of me. I am one of his wife's friends. We're very close admittedly, but I'm only a new friend of hers and Mrs. Duke has discussed her life . . . her private life with me and she discussed it with others as well.

THE CROWN: I think the position, your Honour, so far as the complainant is concerned, I think that she is concerned that Mr. Duke as indicated under this Section, that he definitely be instructed by the Court his responsibilities under this Section 717 and the sureties filed. And this woman's main concern is that this type of conduct will not happen again or be tolerated by the Court.

THE COURT: But there was a revolver?

THE CROWN: It turned out to be a starter's pistol, I understand from the police but it was . .

MRS. CITRON: It is not a starter's pistol. I've seen this gun, Mr. Latimer. It is not. It's very similar to the one that my husband has. It was not a starter's pisol. This gun has been in his car and he's been outside my house with the gun before about six months ago sitting under the seat next to him. He's never been known to carry a starter's pistol and I told him to pull the trigger and shoot me and it was only hours later that I realized what I'd said to him. This man continually carries this gun. He admitted to my husband in my home the next day that he didn't remember what he's doing; that he shouldn't carry this gun. If anyone is to carry a gun, surely it should be me for a man that's driving up and down my road and my friends looking out and laughing over it and I have plenty of people that saw him and the night in question that he came up, he did not come up from the main road because he would have possibly parked just left at our door. He was probably in his little spot on down the road, parked as usual. I don't wish to cause anything or any upset but I don't like this going on. I don't think I have to put up with it.

THE COURT: Mr. Hennessey, are there any questions?

MR. HENNESSEY: I have no questions to ask of Mrs. Citron. I have a couple of remarks to make to the Court. The offence in question occurred on the 1st of September and the laying of the charge was precipitated by a telephone call made by Mr. Duke to the Citron residence because again his wife was away. At this period of time there was very strained, straitened circumstances between Mr. Duke and his wife. Both myself and his older son have remonstrated with him on the foolishness and the illegality of this type of behaviour whatever his difficulties may be with his wife and I think the Court can rest assured that the Recognizance entered into will be honoured completely in its entirety from any contact either physical or verbal over the telephone or any other matter with Mrs. Citron.

THE COURT: Unless there's something you wish to add, Mr. Latimer.

THE CROWN: No.

THE COURT: Then the Court is finding that the fear is justified and that it is ordering the said George Clinton Duke that he will post cash security to be of good behaviour in the cash sum of two thousand dollars to stay separate and apart from the informant; to surrender forthwith any firearms to the Burlington Police and not to have in his possession any firearms or offensive weapons for a period of six months.

MR. HENNESSEY: Your Honour, with respect to the question of firearms, I realize the difficulty of the situation, but Mr. Duke happens to be the owner of a perhaps, I'm informed by other sources than him, the finest private collection of antique and modern firearms in the country valued at many thousands and thousands of dollars. These firearms are in a specially guarded room in his house, I believe.

MR. DUKE: Correct.

MR. HENNESSEY: The alarm system is connected to the Police Department.

MR. DUKE: No, it's radar, the alarm is.

MR. HENNESSEY: And I would respectfully suggest to the Court that the restriction be that he won't have in his possession out of his home. I would think that perhaps even the Burlington Police would be reluctant to shall we say . . .

THE COURT: Not have in his possession out of his home. The Order for surrender will be immediately. That is the Order made by the Court."

The Provincial Judge was without jurisdiction to make the order depriving Duke of the collection of guns that he kept in his home.

Mr. Latimer was concerned about Duke having a permit to carry a gun and wrote to Sgt. A. L. Haughton, Registrar, Weapons Section, O.P.P. Toronto, on December 24th, 1969, telling him of Duke's actions in this case and recommending that his permit to carry a weapon be cancelled. He also requested the Burlington police force to make a similar suggestion and this was done. As a result Mr. Haughton immediately called Mr. Latimer and assured him that the permit to carry would not be renewed when it expired the next week. It is quite clear from the evidence given by officials from such branch of the Ontario Provincial Police that Mr. Duke will not have a licence to carry a gun hereafter issued to him. The statement contained in the Hamilton Spectator in its issue of December 20th to the effect that Judge Langdon and Crown Attorney Latimer had conceded that Duke had been accorded special treatment is entirely untrue and without foundation. Judge Langdon in his evidence said he could not recall a single incident where he had ever imposed such a large cash requirement for such a recognizance. He also intimated that because of the delay in making this complaint he would not have ordered such a bond to have been entered into except for the fact that it was being arranged by consent of all the parties. After court had adjourned Detective Sergeant Richardson came outside the court and told Mrs. Citron that she ought not to worry about the matter any more because they were trying to have Duke's gun permit taken away from him for good. Mrs. Citron also acknowledged in her testimony that she had no complaint whatever against the Justice of the Peace Mr. Daniels.

To show that Mrs. Citron had no complaint with the actions of the crown officials, I quote from her evidence at the inquiry as follows:

At p. 167:

> "Q. Then at this hearing you gave your evidence with reference to the event of September 1st, and then His Honour bound the accused over to keep the peace and stay away from you and put up a bond of $2,000.00, and also directed that the permission to carry the gun outside of his home be suspended. Did you have any objection to that disposition of the case?
>
> A. I didn't object to Mr. Langdon's decision. It was everything that I went into court for."

And then at p. 169 in answer to a question as to what complaint, if any, she had about the disposition of the case or the handling of it by anybody, her answer was:

> "A. No, Judge Langdon was very fair with what was presented to him, his decision in the court. I have nothing to say against that at all, no complaint."

And at p. 189:

> "Q. So, I take it, you have no complaint against Mr. Daniels?
>
> A. None whatsoever."

And at p. 218:

> "Q. Do you question the good faith of the Crown Attorney and Judge Langdon in believing you did not want publicity?
>
> A. I don't question Mr. Latimer at all, no."

Mr. Citron in giving his evidence acknowledged that on October 13th after the Burlington police were called they came to the home within a very few minutes and stayed for a considerable time to guard the family. He also acknowledged that Daniels, the Justice of the Peace, was trying to put the case into court as speedily as he could and that he in no way tried to slow up efforts to proceed with the case. He says throughout the whole episode from October 13th to the end of the court proceedings that no constable or officer of the Burlington police office or of the Ontario Provincial Police intervened in any way or attempted to influence the decision of the court.

The facts surrounding Duke's attendance at the Citron home on September 1st, 1969, and his threatening of Mrs. Citron at that time in no way involved the Mafia or anyone associated therewith. The prosecution of Duke in the Milton Provincial Court in consequence thereof was free of any improper influence. Duke did not receive any special treatment in such case at the hands of any official of the Attorney General's Department or at the hands of Provincial Judge Langdon, Crown Attorney Latimer or any police officer. The Ontario Provincial Police had no association what-

ever with such case or its prosecution. No superintendent of such police force or any Provincial Police officer or any other police officer either phoned Mrs. Citron direct or through any intermediary or in any other way to make certain approaches for a private meeting to get this matter settled privately. Rodger never approached anyone to have a meeting with Mrs. Citron nor passed any message on to her that she was doing the wrong thing in pursuing this, or that he wanted to see her to discuss it. The fact was he refused to either see her or talk to her about the matter.

The statement that Duke was simply ordered by the Court to keep the peace and his gun licence was lifted for six months does not relate the full penalty imposed by Judge Langdon because he was compelled to post cash security to be of good behaviour in the sum of Two thousand dollars as hereinbefore stated.

GERALD FRANCIS McAULIFFE – NEWSPAPER REPORTER

It becomes essential to examine the part that McAuliffe played firstly in his discussions with Mrs. Citron, in publishing his story later in the Hamilton Spectator and then supplying Dr. Shulman with information which forms part of the allegations in the speech in question in the Legislature. His association with the events from the time the case was heard forms such a prominent part of the story that it should be examined carefully.

Gerald Francis McAuliffe is in charge of the Burlington news department of the Hamilton Spectator. Since July 1969 he has been looking into the background of George Clinton Duke. He started this investigation because he had heard that Commissioner Eric Silk had entertained Duke and that the latter had an extensive criminal record. He secured Duke's American criminal record and learned that he had been deported to Canada on his release from prison. A term of his parole was he should not again enter the United States. He made some investigation into his business activity and learned of his financial success but could find no trace of Mafia money finding its way therein. He was told that Papalia and Le Barre were at the Duke premises on the same occasion but not on any occasion when any officials of the Ontario Provincial Police were there.

He learned of the charges laid against Duke by Mrs. Citron when one of the officials of the Hamilton Spectator called him saying he was a friend of Duke's and did not want the latter's name mentioned in connection with such charges. About November 21st he called Mr. Hennessey and asked him why the case was being heard in family court. He says such solicitor told him Mrs. Citron requested such transfer because of extra-marital activities between herself and Duke. Hennessey denies he gave such explanation. Mrs. Citron emphatically denies that there was ever any such association with Duke.

On the morning of December 16th McAuliffe went to see Mrs. Citron at her home about 11.30. Their discussions lasted between 3 and 4 hours. He asked her if she had ever had an affair with Duke and this she denied

emphatically. It is rather difficult to believe that McAuliffe would have made such inquiry of Mrs. Citron if such suggestion had not been made to him by someone. Duke himself had wrongly suggested that Mr. Citron was dating his wife. The most probable source of this gossip reaching the ears of McAuliffe would be through Hennessey who may have been so informed by Duke. In the transmission thereof, like all rumours, it took on connotations in the repetition thereof and in this case McAuliffe understood the reference was to Duke and Mrs. Citron. Probably his knowledge of Duke's reputation for such activity caused him to come to that conclusion. When Hennessey was confronted by McAuliffe as to why this case was to be heard in the privacy of family court such solicitor felt constrained to give him the explanation of extramarital activity between members of each family. He was anxious that his client Duke should have as little publicity about the hearing as possible and probably hoped such explanation might put off further investigation by McAuliffe. I feel therefore inclined to the view that in all probability such solicitor did give such information to McAuliffe at some time before December 16th.

McAuliffe told Mrs. Citron on this occasion that the public would not be admitted to the case the following day and that he would like to meet with her thereafter to discuss what had happened in the court. He told her to pay particular and close attention to whether or not the statement that she had given to the Burlington Police Department was read into the court record. He says he went over all her evidence with her. He says that Mrs. Citron was concerned over the fact that the sergeant who came to their home as a result of her call on the night of October 23rd had to call Deputy Chief Jeffries to get the latter's permission to the officer staying in the Citron home during the balance of the night for protective purposes. In her testimony at the inquiry Mrs. Citron said the Burlington Police had acted promptly and efficiently and that she had no complaints whatever about the manner in which they responded to her call or in their subsequent attention to the matter. There is no complaint whatever in the statement that she gave the investigating officer about the Burlington Police. Mr. McAuliffe realized that the effect of having a closed court in the circumstances would be to avert suspicion against Mrs. Citron in the minds of the public but he did not give any warning of such possible result. He says he told her such allegations of misconduct on her part had come from Duke's lawyer Hennessey. In the light of this disclosure as to the source of such allegation I cannot understand why she did not chastise Hennessey and Duke when she saw them in court the next day or at least have complained to the crown attorney about such improper suggestions against her reputation. If McAuliffe had been in any way interested in the welfare of Mrs. Duke he would have told her that a private hearing of her case would cause further rumours adverse to her reputation. If he had been in any way interested in the proper administration of justice he would have called the crown attorney and told him of Duke's record and that

there were reasons why the case should not be held in the family court. However if he had done so he would have not have had such a story to write. He was at the court but not in the court at the time of the hearing. Mrs. Citron for some reason did not tell Mr. Latimer of McAuliffe's visit to her the previous day nor of his advice to her and that she was to meet him after the court case to give him the details of what had happened. She did not follow McAuliffe's directions to request that her statement to the police officers be read into the record of the court. In view of the vulgar language therein attributed to Duke by Mrs. Citron there was good reason, so far as Mrs. Citron was concerned, in not having it read into the record. The recording thereof in a newspaper would have caused much concern to her. The same added nothing factually to her testimony as she had related all the details of the September 1st incident in her oral testimony.

It is quite clear from the testimony and the inferences properly to be drawn therefrom that Mrs. Citron and McAuliffe had entered into arrangements which would permit such newspaper reporter to write an exciting newspaper article critical of the police and those in charge of the administration of justice in the county. The only reason for arranging a meeting subsequent to the court hearing was that she would then supply him with more detail and particularly as to what had happened in court. The unfortunate part of McAuliffe's article which appeared in the Hamilton Spectator on December 20th, 1969, is that he could have written a very interesting story if he had only kept to the facts of the case and those which he had investigated which appear to be correct. He would have been quite justified and performed a commendable duty as a newspaper reporter commenting on the facts of the case and the evidence adduced thereat giving full details of the court proceedings but he continued to state as facts matters which he must have known were if not untruthful at least clothed with very considerable doubt. The article contained the following statements of fact:

> (a) that she complained to the Burlington Police but they refused to lay charges;
>
> (b) it took three visits over the period of a week before the justice of the peace would allow her to swear out the private charge;
>
> (c) she gave the police at their request an 11 page 1,000 word statement in which she described close relations between Duke and senior officials of the Ontario Provincial Police and the Burlington Police Department but that her statement to the police was not produced in court.

Her statement, Exhibit 9, above referred to said nothing of senior Ontario Provincial Police officials. McAuliffe had been shown her copy of the statement on the night of December 16th and again on the 17th. His investigation and knowledge of these proceedings must have shown to him clearly that the Ontario Provincial Police had not interfered or taken any part

whatever in this case. There is now dispute between Mrs. Citron and McAuliffe as to whether she told him any of these facts. She says she didn't make these different statements to him. He says she did. It is difficult to tell which one is correct. It must have been apparent to him that in respect of many of the details that he says she told him that she could only be speaking of matters of which she had no knowledge and of which there must have existed the greatest doubt. She does not relate matters in a manner that inspires confidence. A reading of her testimony establishes this abundantly. There were many other sources from which such reporter could have ascertained the truth of many of these allegations. McAuliffe was anxious to get a good story and she was willing to give him details without certainty as to the truth thereof. She knew the statement was to be published. Immediately on the publication of such story on December 20th rumour began to circulate that Mrs. Citron had been having an affair with Duke and that she had attempted to blackmail him. She received obscene and insulting telephone calls and accusations against her character which greatly disturbed her.

Mrs. Citron's main complaint in respect of the hearing on December 17th now appears to be that while waiting for the case to be called she saw Duke with his lawyer sitting in a waiting room used by lawyers to consult with their clients while other cases are being heard. This is also the room in which the judge gowns. On no occasion did she see Duke in that room with Judge Langdon as the latter was presiding in court at the time.

PLANS TO BUG THE CITRON HOME

Mrs. Citron had made some clothes for Mrs. Leo Joseph Slattery. The latter's husband lives in Burlington and has a very responsible position and both he and his wife appear to be very reliable persons. He had been a close friend of Staff Superintendent A. M. Rodger for some 35 years. They knew the Dukes only casually. In the Fall of 1969 Mrs. Citron had brought some dresses over to the Slattery home. While there she complained about the difficulty she had with Duke and claimed she had problems with the Burlington police in having charges laid. She said they would not take the charges. Slattery was sympathetic and wished to be helpful. He said he had a friend in the Ontario Provincial Police whom he would contact and see if he couldn't get the matter straightened out and probably ease her mind in relation to the Burlington police force. While Mrs. Citron was still there he called Rodger to inquire from him about the matter but the latter was away somewhere in western Ontario on duties connected with his office. Mrs. Citron's version of this telephone call is that the message was that Rodger was away for a three week vacation in the Bahamas. Both Mr. and Mrs. Slattery are convinced that such a message was not received at that time. Without seeing Rodger or anything more being said about the matter Mrs. Citron went to Mrs. Duke and told her she now had a friend in the Ontario Provincial Police force who was not under the influence of Duke and who would help her. Mrs. Duke asked who it was and on being told it was Rodger Mrs. Citron states that Mrs. Duke then said, "Oh, don't look for any help there. He just had a tractor mower delivered to him by Clinton." Mrs. Duke emphatically denies this and all the evidence clearly shows no mower of any kind was ever given or sold to Rodger by the Duke establishment. Mrs. Citron also claimed that Mrs. Duke had told her at that time that Rodger had been down to their apartment in the Bahamas. Mrs. Duke denies having said any such thing to Mrs. Citron and all the evidence establishes clearly that neither Rodger nor his wife were ever guests or stayed at the Duke apartment in the Bahamas.

Mrs. Citron then went back to Mrs. Slattery and told her that Rodger had been given a tractor mower by Duke and had also occupied their apartment in the Bahamas on his holiday. Mrs. Slattery relayed this story to her husband who felt stunned by such an accusation against his friend Rodger. He phoned the latter to come to his home. He then told the officer of the accusations against him. Rodger emphatically denied the same. Later but before December 17th Slattery told Rodger how concerned Mrs. Citron was about the revolver incident of September 1st with Duke and the trouble she was having with the Burlington police. Rodger said he knew nothing about the case as it was not under Ontario Provincial Police jurisdiction but that he would see what the reason was behind it if he possibly could without interfering with any other police force. About 10 days later Rodger was at the Slattery home and asked, "Why was the delay of several weeks before the charge was laid?" Slattery could not answer this question as he and his wife had been led to believe the complaint was made to the police immediately. Before Rodger came that evening Mrs. Slattery had telephoned Mrs. Citron suggesting that she should come over and explain the matter in detail personally to Rodger and that this would be more satisfactory to both of them. Rodger, however, had been making some further inquiries about the matter and when he arrived at the Slattery home he indicated to them that he neither wanted to see Mrs. Citron or talk to her on the telephone. They telephoned Mrs. Citron who suggested that he should come over to her house and discuss the matter with her there. The Slattery participation in this matter was entirely by reason of their goodwill and in an effort to help Mrs. Citron as they had accepted her version of the events. In the meantime Mrs. Citron and McAuliffe had made some plans about having a tape recorder and McAuliffe hidden in the home so that conversations with Rodger might be taken down thereon when he arrived. In this regard Mrs. Citron gave certain answers to Mr. Smith counsel for Rodger at this hearing which are recorded at pp. 337-339 as follows:

> "Q. Yes, I understand. Now, I don't think this could happen at all, but I just want to put it to you there was no suggestion at any time made to you that you should have Mr. Rodger at your house and should have your house bugged.
>
> A. None whatsoever.
>
> Q. None whatsoever?
>
> A. No.
>
> Q. All right, I just wanted to be clear about that. Now, in any event, I think you told the Commissioner that subsequently at about 12.15 that night, that is, the same night as the telephone call we are discussing, Mrs. Slattery again telephoned you, is that right; am I right?
>
> A. That was the only telephone call, 12.15 that night, yes, the last telephone call.
>
> Q. There was the earlier telephone call to invite you?
>
> A. That's right.

Q. And then the later call about 12.15?

A. Yes.

Q. And I understand in that later call it would appear to you that Rodger had already left the house?

A. Yes, because Mrs. Slattery said, 'I just walked down the hall with him' so he had left by the time she did make the phone call, as far as I know.

Q. So, he could not possibly have heard the call?

A. No.

Q. If he had just walked down the hall he would not be aware that Mrs. Slattery had made such a phone call to you. You have told Mr. Robinette the substance of that call, didn't you?

A. Yes.

Q. Now, other than these conversations or this conversation that I have mentioned about Mrs. Slattery calling and inviting you to her house was there ever any other arrangement suggested whereby you would meet Mr. Rodger?

A. None whatsoever; I have never met the man.

Q. You have never met the man. And I put it to you there have been no further discussions about meeting him?

A. None."

On Thursday, September 17th Mrs. Citron indicated to her counsel that she was concerned about the above answers she gave and wished to comment thereon. She was given this opportunity and then stated at Volume 4, p. 520, line 24, as follows:

"A. Well, the question was rather a long one and I was rather confused. There was a slight, a very slight suggestion, and this is why I am here.

Q. Yes?

A. I was on the telephone talking to Mrs. Slattery, and as I have already stated, Mr. McAuliffe was in the house. He knew a little of Mrs. Slattery's conversation because he had been near the telephone, and there was a suggestion, 'See if he could come up here'.

Q. Yes?

A. And, as I stated, I was very busy, and I passed some remark, like, 'Oh, I cannot; I am too busy', you know, and he said, which there was no other reference, 'Well, if he came up here we could have his conversation bugged', and my remark to him was . . .

Q. Who is this?

A. Mr. McAuliffe.

Q. 'We could have his conversation bugged'?

A. And my remark was, 'Oh, for goodness sake!' or something, and that was how light of it I was making.

Q. But at all events it does seem clear from what you have now said that there was some suggestion of Mr. McAuliffe that any conversation you might have . . .

A. Some suggestion, yes.

Q. . . . that you might have with Mr. Archie Rodger might be bugged?

A. That is correct – very slight.

Q. Now, I want to ask you another point.

THE COMMISSIONER: You did not accede to that, however?

A. No."

To Mr. Daiter, counsel for Duke, in cross-examination she had said on a previous occasion at p. 236 in answer to questions as follows:

"Q. Was Mr. McAuliffe of the 'Spectator' in your house at that time?

A. At the time that I made the telephone call, yes. Mr. McAuliffe was not aware that I was on the phone to Mrs. Slattery because I took the call downstairs in the basement.

Q. Mr. McAuliffe was in your house at the time?

A. He was in the house, yes, but he was not aware of the conversation and it didn't take place in front of him. He was in another room."

McAuliffe later acknowledged in his evidence that he had suggested to Mrs. Citron that she phone Mrs. Slattery to tell Staff Superintendent Rodger that if he wanted to see her he could see her at her home but that he, McAuliffe, wanted to be told if he was going to be there as he wanted to come out half an hour ahead of time and conceal a tape recorder in the house or in common terms to have the same "bugged" and he had her permission to do so. He said that later that evening Mrs. Citron telephoned him to say that Rodger would not come to the home. It is difficult to understand how Mrs. Citron could have forgotten such arrangement or attempted arrangement with McAuliffe particularly when she first had to call the Slatterys in an effort to get Rodger over to the house and later had to call McAuliffe back when she found that he would not come. The combined effect of her testimony on these two different occasions in respect of this matter leaves me with the greatest doubt as to her credibility. Her attempt to use the Slatterys to assist in getting Rodger to her home was at least poor return for their interest on her behalf. She had never seen nor spoken to Rodger. He had done nothing to her to earn her resentment. The Ontario Provincial Police were in no way associated with her case or its investigation. He was a close friend of the Slatterys who were trying to help her. Despite this she became a party to an attempt to trap Rodger into a bugged conversation that could be used by McAuliffe if it provided suitable material. The only reasonable inference that can be drawn therefrom is that she had agreed to join with McAuliffe to assist him in getting material for his journalistic efforts.

ARRANGEMENTS BETWEEN McAULIFFE AND DR. SHULMAN

Mrs. Rose C. Paikin is employed at the Burlington Gazette. In July 1970 she had occasion to call Warren Barton, the city editor of the Hamilton Spectator. She was informed he was on vacation but she was put through to speak to the person taking his place in his absence. She could not recall that person's name but after she had finished discussing her business with him she said that she had heard the Hamilton Spectator had made a deal with Shulman about this case. Her words were, "I had heard that they had been digging up the information on Mr. Duke for an awfully long time, but they could not publish it as they thought it might be libellous and they called up Mr. Shulman and gave him the information so that he could report it in Parliament and they could scoop what he said and get the information into the paper without having a responsibility, and he said, 'Yes, how else are we going to get it published,' and that was the gist of it." Mrs. Paikin had previous thereto heard such rumour from an official of the Oakville Journal while in the office of that paper. This evidence in itself is not impressive because of the fact that Mrs. Paikin does not know the name of the employee of the Hamilton Spectator that she was speaking to. He can only be identified as filling in for the city editor in the latter's vacation. It is worthy of note, however, that no witness was called by McAuliffe, Shulman or the Hamilton Spectator to deny that such arrangement had been made, nor was she seriously cross-examined by anyone as to the truth thereof. This testimony is relevant at this inquiry to the extent only that it tends to throw light on the truth or falsity of the allegations made in the legislature.

The Legislative Assembly Act, R.S.O. 1960, c. 208, s. 37, contains the following protection to members of the legislature:

> "37. A member of the Assembly is not liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof."

The Libel and Slander Act, R.S.O. 1960, c. 211, s. 3(1) is as follows:

> "3. (1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously:
>
> 1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth that may exercise any sovereign power acquired by delegation or otherwise."

It is difficult to understand why Mrs. Citron would be involved with McAuliffe in creating further publicity when the result of the December 20th issue of the Hamilton Spectator had brought such humiliating results to her. The answer may be found in the headlines of such article. In large print it stated:

> "Gun-toting Burlington Man Protected by Secret Court.
>
> A millionaire Burlington businessman – who pleaded guilty to a charge related to threatening the life of a socially prominent fashion designer – was given a private court hearing this week so newspaper publicity would be avoided."

Beside the article was a full length picture of Mrs. Citron. Mrs. Citron may have been pleased with the publicity that she was receiving. She may also have found in such publication a means of retaliating against Duke.

There can be no doubt but that her letter of January 6th, 1970, to Mr. Wishart, the Attorney General and Minister of Justice for Ontario, Exhibit 10, was written as a result of her arrangements with McAuliffe. Later he drove her to Toronto. This was after he had many conversations with Dr. Shulman about the matter. He says this trip was so she might see the Attorney General. Evidence of some arrangement between them is found in his testimony at p. 831 where he volunteered the following information:

> "A. Well, I know she went to see Mr. Wishart, and, you know, I followed her, and she went to see Mr. Nixon. Mr. Nixon was away and John Morritt, his executive assistant, made arrangements for her to see Mr. Breithaupt in the absence of Mr. Singer who was at Osaka at the time, and she was interviewed by Dr. Shulman."

McAuliffe says that Dr. Shulman had told him in advance that the latter was to deliver his speech of June 4th and he was there to write it up. The report of such speech in the Hamilton Spectator the following day contained the following note:

> "Most of the details outlined to the Queen's Park Committee yesterday by Dr. Morton Shulman were supplied by Mr. McAuliffe."

I should make no further comment on the above facts because they are the basis of litigation now pending between Duke on the one hand and McAuliffe, the Hamilton Spectator and Shulman on the other. There may also be other parties involved in such litigation. To discuss the legal effects of such arrangements, if they were actually made and acted upon, might well prejudice the rights of the parties involved therein.

McAULIFFE'S CONTEMPT

McAuliffe claimed to have secured information involving Duke with Ontario Provincial Police personnel from at least two informants who were Ontario Provincial Police officers and another person as well. He refused to give the names of any of these informants on the ground that the information that had been given to him was a confidential discussion and that he was honour bound not to divulge the names of his informants. He did, however, give the substance of that information to Dr. Shulman. He could not remember whether he had given him the names. Each was carrying on their own investigation and exchanging information. Between January and June 1970 between one or two dozen telephone calls passed between them as well as meeting in person on two or three occasions. These meetings and calls were for the purpose of passing information to each other in respect of their respective investigations. They had worked together before in 1965 on the inquiry conducted by Mr. Justice Parker in respect of allegations made by Dr. Shulman concerning coroners' inquests. Motions were made by counsel adverse to McAuliffe to have him committed to gaol for contempt of the inquiry arising from his refusal to answer questions as to the identity of his informers. He had been directed to answer such question and his refusal was deliberate. The only justification put forward by him for not doing so was that the information was given to him by the informants in confidence. I heard counsel on the question as to whether I should issue contempt proceedings against him. This was a preliminary consideration only. If I had decided to do so then his counsel would still have had the right to fully present his submissions in respect thereof. *McConachy v. Times Publishers Ltd. et al.*, 49 D.L.R. [2d] 349 is authority for the proposition that newspaper reporters do not enjoy the privilege of refusing to divulge the name of their informers in a duly constituted court of law if the question is relevant and material. This decision, however, does not apply to interlocutory matters.

One of the problems raised by counsel for McAuliffe was that a commissioner under The Public Inquiries Act had no right to commit a witness for contempt in such circumstances. If there is such right it devolves upon the commission by virtue of s. 2 of this Act, which reads as follows:

> "2. The commissioner shall have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases."

Mr. Justice Dorien of the Quebec Superior Court at the conclusion of a commission hearing which he held in 1964 under the provisions of The Inquiries Act of Canada, stated:

> "In the course of this inquiry I have realized that the judge, presiding on a Royal Commission set up under The Inquiries Act does not have all the powers which are ordinarily his in the exercise of his judicial duties.
> He cannot decide whether there has been contempt of court either in his presence, or outside his presence. This lack of powers, as I found on several occasions, leads to situations that are most embarrassing to a judge and which prevents the normal conduct of the inquiry.
> In consequence the Act should be amended by the addition of a section meeting this deficiency."

The section of The Inquiries Act of Canada which establishes the authority of the commissioner at the hearing is almost identical with that of the Ontario Act above quoted.

The matter was considered in the British Columbia case of *Braaten v. Sargeant et al*, 61 D.L.R. [2d] 678, and the Court there decided the commissioner had such power of committal. The matter has been considered in our own Court of Appeal in *Re Diamond v. Ontario Municipal Board*, [1962] O.R. 328. This case came before the court by way of stated case pursuant to the the powers of The Ontario Municipal Board Act, R.S.O. 1960, c. 274, where one of the questions asked was the power of that Board to commit to gaol for failure to comply with a direction to answer a question on a hearing before it. It was contended such powers existed by virtue of s. 37 of the Act which is somewhat broader than s. 2 above quoted. The power under The Ontario Municipal Board Act is given in the following words:

> "33. The Board for all purposes of this Act has all the powers of a court of record and shall have an official seal which shall be judicially noted."

Mr. Justice Schroeder came to the conclusion that such Board could commit but only for contempt committed in the presence of the court.

In deciding not to issue committal proceedings against McAuliffe, I was influenced by the following facts, namely:

(a) he says the information he obtained from his undisclosed informants was entirely of a hearsay nature and of little value to the commission. It took the form of alleged preferment that Duke was alleged to have been receiving at the hands of police officers. From other evidence given I am convinced that such information was of a hearsay nature and very unreliable;

(b) competent police officers acting on behalf of the commission who have made extensive investigation assure me we have already heard in most cases by firsthand testimony, the substance of what was told to McAuliffe in the form of hearsay;

(c) McAuliffe is one of the defendants in litigation in the form of libel, slander or some form of conspiracy alleged to be arising out of the speech in question in the legislature and the preparation therefor. I must be certain that the machinery of this commission is not being used unfairly to assist any of these litigants in their subsequent actions;

(d) while newspaper reporters do not enjoy a special privilege of non-disclosure from their source of information, the power of committal should be used against one refusing to divulge such information only where it is actually necessary for the purpose of the commission.

The right in the court to commit a person for contempt in the face of the court had its origin in the fact that of all places where law and order ought to be maintained it is in the courts. The course of justice must not be depleted or interfered with thereby. It is not a power given to protect the dignity of an offended judge, but rather a means to protect the rights of the public to the extent that administration of justice shall not be obstructed. The jurisdiction to punish summarily for contempt in the face of the court is necessary to ensure that the matter can be dealt with at once and that the subject of the hearing will not be adjourned and delayed. The presiding justice must have the power to deal with the matter at once.

It should be noted that I have not decided that McAuliffe or Dr. Shulman were not guilty of contempt of the Commission. The facts as related would indicate that they were guilty thereof. I have simply exercised my discretion for the reasons hereinbefore related of not directing contempt proceedings against them. I am not persuaded that McAuliffe ever felt himself to be under any moral duty not to disclose the names of such alleged informants. This doubt arises by reason of the fact that he passed it on to Dr. Shulman for their joint purposes. The fact such information was entirely hearsay and of a general nature removed it from the classification of information that a reporter secures in confidence from a reliable source. Hearsay gives rise to groundless rumour. I take it to be my obligation to seek out the truth in respect of the matters referred to me and dispel rumours that have no substance in fact.

What I regard most seriously on the part of McAuliffe is that he would use the press as a means of recklessly making statements concerning law enforcement officers including the provincial judge, the crown attorney and police officers, which would attribute dishonesty to them in the course of their duty. The police officer or the man on the bench cannot answer such criticism for the purpose of explaining his actions because he thereby becomes embroiled in controversy. Such officials are subject to reasonable and proper criticism in the public press and otherwise but ought not to be subjected to unfounded accusations. It is such persons of authority that the public turn to and rely upon for protection when the need arises. As an arm of our elected government they are the custodians of law and order but answerable to Parliament. Our communities must have confidence in such public officials. When our people lose respect for the administration of justice, law and order become weakened with a consequent feeling of frustration on the part of good citizens. The motions for contempt against McAuliffe, however, had nothing to do with such publication but only in respect of his refusal to give the names of informants to the Commission. I trust that my report may be of some help in convincing the citizens of Halton County and others that they have no reason to doubt the integrity of such officials.

DR. SHULMAN'S REFUSAL TO DIVULGE THE NAME OF HIS INFORMANT

Dr. Shulman in his testimony acknowledged that he was systematically securing from a member of the Ontario Provincial Police or an employee of the Ontario Police Commission who lived in Toronto, information from files which he knew to be secret and confidential and that were not open to the public. Included in the information so received by him was a copy of the letter from Mrs. Citron to the Attorney General and Minister of Justice of the province. Although directed to answer the question he refused to divulge the name of that confidant or as to which police organization he belonged to or was employed at. Counsel for the Ontario Provincial Police and for the Burlington Police moved that he should be committed for contempt of the commission in failing to answer such question. His refusal to do so was different from that of McAuliffe. In his case there was no feeling of moral duty to protect the informant who gives facts to the news media that it may be passed on to the public.

A police force with confidential information in its security files must be free of officers or employees who pilfer out information therefrom to anyone. One who acts so disloyal to the force participates in the destruction of its efficiency. Other police forces will hesitate to pass on to the Ontario Provincial Police confidential information if there be any chance of it being available to anyone outside the force. Such conduct creates distrust within this branch of law enforcement of one officer against another until it be known who the offending party is. Any police official who is guilty of such conduct is plainly violating his duty and guilty of an offence under s. 103 of the Criminal Code, which reads as follows:

> "103. Every official who, in connection with the duties of his office, commits . . . a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not . . . the breach of trust would be an offence if it were committed in relation to a private person."

It is very evident that it is important to both the Ontario Provincial Police and the Ontario Police Commission to ascertain the name of this informant so that further leaks of secret files may not take place. I do not detract from the importance of such safeguard. But it is not the function of this commission to ascertain such information for the police. Such officers will in their own way find out the name of such person. Section 38 of The Legislative Assembly Act in any event prevents any order of committal being made while the House is in session or for a period of twenty days preceding or following the session. Such section reads as follows:

> "38. Except for a contravention of this Act, a member of the Assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session."

In deciding against the issue of contempt proceedings herein I was influenced by the following facts. Dr. Shulman in his testimony gave answers to the following questions as herein set out:

> "Q. You have already told his Lordship in answer to a question from him, and you made it very clear I think, that you do not make and did not make any allegation of any improper relationship between the personnel of the Ontario Provincial Police and any person or persons of known criminal activity other than Mr. Duke?
>
> A. That is correct, sir.
>
> Q. Now in connection with the relationship improper relationship, or relationship generally between members of the Ontario Provincial Police and Mr. Duke, have you any information on that subject matter which has not been covered by the evidence?
>
> A. No sir.
>
> Q. And you have been here throughout the entire hearing?
>
> A. Yes. Everything has been brought here that I know of on that subject."

Again in dealing with the identity of such informant the following answer is given:

> "THE COMMISSIONER:
>
> Q. That person has not given you any information that has not been revealed in some form at this inquiry?
>
> A. Nothing whatsoever, sir."

At the outset of the inquiry I stated as follows:

> "This inquiry is a proceeding to discover the truth of the matters involved and is not a trial of any person or police officer. Counsel appointed by me have made extensive investigation and have summoned witnesses to relate their knowledge as to various facts. These

witnesses will be called and examined by such counsel in such order as they may decide from time to time. Counsel who here represent persons or corporations who may be affected by the result of this inquiry will have the right to ask relevant questions as to matters within the knowledge of the witness which affect that client or assist in bringing out the truth of the matters in question.

The commission welcomes information as to any other person whose testimony is pertinent to the issues herein. If anyone affected by the result of this inquiry or not has knowledge of any facts helpful in establishing the truth he should contact commission counsel as early as possible and impart this information to him so that more investigations may be made in respect thereof."

Although asked to do so again throughout the inquiry Dr. Shulman on no occasion gave to the commission or commission counsel the names of any other witnesses to be called. It would appear therefore from all of the evidence that the information which he has secured from his informant is already before this commission and nothing is to be gained from the standpoint of learning anything more by compelling him to give the name of the informant. It is therefore not material that we press the question further with him.

Another reason which caused me to decide against citation of proceedings is that Dr. Shulman's admitted acts of securing secret and confidential information from his informant may render him guilty to prosecution as well. It is a basic legal right of the Canadian citizen that he should not be obliged to give information that may incriminate himself. To compel further disclosure might be an infringement of that safeguard and unfair to him.

I have also in mind that Dr. Shulman is one of the defendants in such above named litigation. As far as his speech in the Legislature is concerned that body is the proper forum to judge of what he said on that occasion.

REQUEST TO BROADEN THE TERMS OF REFERENCE

A request was made that the terms of reference be extended. To that I indicated that it would greatly facilitate the commission if it were made known the particular area in which such extension was sought and also the names of such witnesses as would be helpful so that they could be interviewed preparatory to deciding if the Lieutenant Governor in Council should be asked to give the commission wider terms of authority. On September 18th Dr. Shulman wrote me asking me to look into the following matters which he indicated involved organized crime. The first matter set out by him is as follows:

> "1. The role of the Ontario Provincial Police and other police agencies in failing to take any action following the formation by organized crime of a 'sweetheart' union in this city, accompanied by intimidation, violence, and a threat of death, this failure, despite the fact that all the information was placed in the hands of the O.P.P. and the Police Commission. Two important witnesses in this matter have already been named in this hearing."

It was established that the Ontario Provincial Police have already fully investigated the above matter and as a result charges of extortion, fraud, threatening, counselling to commit an indictable offence and comparable offences have been laid against some seven people who are awaiting trial thereon. The Ontario force were assisted in this investigation by the Metropolitan Police, the Royal Canadian Mounted Police, Mississauga Police and the Fire Marshal's office.

The second matter sought to be investigated was set out in para. 2 of such letter in the following form:

> "2. The failure of the O.P.P. to take action against organized bookmakers in southern Ontario despite the fact that the information about this syndicated crime has been in their hands since November, 1968, at which time U.S. authorities were informed that action was about to be taken in conjunction with imminent raids in the U.S.A."

Counsel for the Ontario Provincial Police inform me that the above turns around an incident that occurred where a detective James Moody of the Niagara Falls Police Department, U.S.A. on November 25th, 1968, in Buffalo, swore to an affidavit concerning persons involved in bookmaking activities in Niagara Falls and other parts of Ontario. As often occurs the Ontario Niagara Falls police force invited the Ontario Provincial Police Anti-Gambling Squad to assist them and an investigation was made by the two forces acting together. Reinhart and other persons mentioned in the affidavit have been charged with criminal offences arising out of the incident. The matter was cleared up to the satisfaction of the Ontario Provincial Police force. Neither of the above allegations have reference to improper relations of police officers but at the highest is a suggestion that they have not fully performed their investigations. Dr. Shulman has clearly stated at different intervals throughout this hearing that there is no suggestion on his part of improper relationship as far as the Ontario Provincial Police are concerned. It would be an injustice to commence an investigation into a case where the parties are still facing trial. One of the functions of the Ontario Police Commission is to investigate charges of impropriety or insufficiency of action on the part of Ontario Provincial Police officers. That body is much better qualified to investigate such complaints than a Royal Commission. It is charged with the general problems of law enforcement within the province. In any event in the absence of information as to witnesses or better particulars of the charges I should not ask for the authority to go beyond my present terms of reference, at least as far as the above two instances are concerned.

THE BURLINGTON POLICE

Although my terms of reference did not require me to inquire into the Burlington Police Force, much of the testimony related to them, particularly in the Citron investigation and the subsequent prosecution of Duke. The report could not fairly be concluded without clarifying their position in the matter. It is to be remembered that no complaint had been made to them of the occurrence of September 1st by Mrs. Citron or anyone on her behalf until October 13th following. On the latter date when a call was put in to such police force from the Citron home Constable Eaton was at the house within fifteen minutes. With his superior officer's permission he remained there most of the night to protect the family if necessary. Mrs. Citron was advised by officers of such force to see Mr. Daniels the Justice of the Peace that she might lay appropriate charges. Mrs. Citron described Sergeant Richardson in her testimony as a wonderful police officer. It was such officer who approached Crown Attorney Latimer with the suggestion that something should be done to have Duke's permit to carry a gun cancelled. On November 21st at the court he had heard Mrs. Citron asking if the case could be heard in private to avoid undue publicity for Mrs. Duke. Outside the court on the same day he informed both Mr. and Mrs. Citron that the case was being adjourned to the Family Court at Milton.

There has been no evidence of any laxity on the part of the Burlington Police in the enforcement of law and order as against Duke or any other person. McAuliffe spoke of rumour he had heard that Duke was given the kid glove treatment but could not tell of any incident substantiating that or giving the name of any witness who could do so. He referred to an occasion when Duke was supposed to have pointed a gun at a group of eight neighbours but George R. Craddock who was the next door neighbour and a responsible person said there was no truth whatever therein. There was nothing in the evidence to suggest that such police force did not do their full duty at all times. Chief L. G. Lawrence of the Hamilton Police Force has had a long and close connection with police force and police

work in the Hamilton area. It is necessary that such law enforcement officers should co-operate with each other in close association and to know of the reliability and work of each other. Chief Lawrence has been outstanding in his police work. In his testimony he said the reputation of the Burlington Police Department was that of an honest and efficient force. The evidence in this inquiry concerning their participation convinced me that such reputation was and still is deserving.

STANDARD OF CONDUCT EXPECTED OF POLICE OFFICERS IN THEIR PRIVATE LIVES

This inquiry is based on the premise that there is a minimum standard of conduct which police officers must observe in their private lives. This standard is quite obviously much higher than the standard required of an ordinary citizen. The most basic reason for requiring this high standard of care in a policeman's private as well as his public life stems from the realization that the efficient operation of a police force depends upon the existence of mutual respect and trust between the public and the police and also among the members of the police force itself. This mutual respect and trust will deteriorate when the conduct in a policeman's private or public life is less than blameless. The reasons being:

(1) The equal administration of law depends upon the principle that justice must not only be done but seen to be done. Thus a police officer must do nothing in his private life that would influence or appear to influence the performance of his public duty as an officer of the Crown.

(2) The police officer is the person most responsible for initially setting the wheels of the administration of justice in motion and therefore the public cannot be expected to respect the law if it does not respect and believe in the dedication and integrity of the police force.

(3) A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in his conduct will colour the image of the police force in the eyes of the public.

(4) There are few professions, if any, where a person is put in a position of such temptation to use his professional authority for personal gain and thus any irregularity in a police officer's conduct becomes the subject of speculation thereby jeopardizing the respect and trust of the public.

(5) As in any other military or quasi-military organization it is essential that morale among members be kept as high as possible and this requires that the members believe in the honesty and integrity of one another. Without this respect the force will not function as it ought to.

This is particularly important if the members of the more junior ranks of the force do not respect the members in the more senior ranks. Thus all members must ensure that by their conduct they do not place themselves or the morale of the force in jeopardy.

In the United Kingdom there have been several committees and commissions set up to study the organization and operation of police forces since the turn of the century. Some of these reports have considered the role of the police in society and how that role is enhanced or deteriorated as a result of the personal conduct of members of the force. At this point it might be helpful to look at some of the comments from those reports.

In the Report of the Committee on the Police Service of England, Wales and Scotland, 1919 (commonly called the Desborough Report after its Chairman, Lord Desborough) the following observations were made:

"*Para. 28.* – In view of the evidence which we have heard as to the work of the police and the high standard of qualifications required, we are satisfied that a policeman has responsibilities and obligations which are peculiar to his calling and distinguish him from other public servants and municipal employees, and we consider the police entitled thereby to special consideration in regard to their rate of pay and pensions.

Para. 29. – A candidate for the police must not only reach certain standards of height and physical development but must have a constitution which is sound in every way. The duties the police have to perform are varied and exacting; they are increasing and will probably still increase in variety and complexity, and a man cannot make a good policeman unless his general intelligence, memory and powers of observation are distinctly above the average.

His character should be unblemished; he should be humane and courteous, and generally he should possess a combination of moral, mental and physical qualities not ordinarily required in other employment. Further, when he becomes a constable, he is entrusted with powers which may gravely affect the liberty of the subject, and he must at all times be ready to act with tact and discretion and on his own initiative and responsibility in all sorts of contingencies. The burden of individual discretion and responsibility placed upon a constable is much greater than that of any other public servant of subordinate rank.

Para. 31. – A number of police witnesses have urged that in various ways a constable is subject to social disabilities by reason of his employment. Moreover, he must at all times, both on and off duty, maintain a standard of personal conduct befitting to his position, and this does impose upon him certain restrictions which do not exist in ordinary employments and hardly apply in the same degree even in the case of other public servants. He is liable to be called for duty at any time in an emergency and in order that he may be available for unexpected calls he may be restricted in his choice of a residence. The

special temptations to which a constable is exposed are obvious, and as any lapse must be severely dealt with, it is only just that his remuneration should be such as will not add to his temptations the difficulties and anxieties incidental to an inadequate rate of pay. The policeman's calling also exposes him to special dangers. He may at any time have occasion to arrest an armed criminal; he frequently has to deal with drunken persons who are responsible for the greater part of the crimes against the person and he may occasionally have to take part in suppressing violent disorder.

Para. 122. – We have already described the special nature of the obligations to the community which a policeman undertakes when he joins the police service. These obligations can only be discharged by the strictest attention to duty, a high standard of conduct and the subordination of personal considerations to the interests of the service and of the community on the part of all ranks. In a service such as the Police it is essential that a high standard of discipline should be maintained, and that irregularities of conduct which would not be noticed in other employments should be the subject of disciplinary treatment.

Otherwise the police would be unable to retain the public confidence, and the proper performance of their duties would become impossible.

But good discipline involves both loyal obedience to all orders of superior officers and a just, considerate and impartial treatment of subordinates; and we regard the maintenance of a sound *esprit de corps* and relations of mutual confidence between the various ranks as one of the principal tests of the efficient management of a police force.

Para. 190. – This Report has so far dealt with the organization of the police and their duties to the public. It remains to say something of the duties of the public to the police. It has already been pointed out that the maintenance of public order and the suppression of all forms of violence are matters in which every member of the community is deeply concerned. From the earliest times the citizen has been, and he still is, required to take part in the preservation of the peace and the suppression of disorder. We consider that if the obligations of the citizen to the community in this respect were more widely recognized, the duties of the police would be materially lightened, their relations with the law-abiding portion of the community would be improved, and the burden of the maintenance of the police would be lightened."

In 1949 the Committee on Police Conditions of Service (commonly known as the Oaksey Report after its Chairman, Lord Oaksey) made the following observation in Part Two at para. 235 of its Report:

"*Para. 235.* – We have already mentioned our view that reluctance to serve under discipline is one of the factors that deter men from joining the police today. But the police are, and must remain, a disciplined service. They are always in the public eye. Without a high standard

of conduct, both on and off duty, they would lose the confidence of the community and without that confidence the police service could never be fully effective. Thus, irregularities of conduct that would be of little importance or would pass unnoticed in other employments, even in other disciplined services like the Armed Forces, would call for strong condemnation in a policeman. Accordingly the police code of discipline must be strict. There is all the more reason that it should be fair and that the way in which it is administered should command the confidence of the men. We have taken a great deal of evidence from all the principal witnesses on the subject of discipline and we record our conclusions in some detail in the paragraphs that follow, but nothing that we say should be read as advocating any relaxation of the high standard of conduct and discipline to which the police in this country owe so much of their success."

More recently there has been the Royal Commission on the Police which issued an interim report in 1960. Paras. 43, 44, 45 and 46 consider the drawbacks of a policeman's life as follows:

"43. Our attention has been drawn to the social disabilities which restrict the constable's personal liberty and, to a varying degree, affect his wife and family. A policeman lives and works as a member of the community. He is essentially a civilian in uniform. But he is expected to uphold standards higher than those of many other sections of the community. His personal conduct in all matters both on and off duty must be above reproach. He must not only be honest; he must establish in the community a reputation for uprightness and fair dealing that puts him beyond the reach of criticism and malicious gossip. Like the parson or minister he is both in the community and separate from it. We were told that this sense of segregation is occasionally keenly felt by the police and their families. It is reflected in some of the statutory rules which regulate a constable's off-duty activities: he may not, for example, take an active part in politics. The police say that the barrier interposed between themselves and the rest of the community restricts their choice of friends and limits spontaneous social intercourse. We accept that, especially in a small rural community, these hardships can at times be very real.

44. Our attention has also been called to the disturbance to family life caused by a policeman's transfer from one place to another. The children's education may suffer, and the constable's wife will have to readjust her way of life and occupations. We understand that transfers are more frequent in county forces than in city and borough forces, and the police witnesses pointed out that the incidence of postings is necessarily greater where, as is commonly the position today, a force is under strength. Although a constable is reimbursed the necessary expenses incurred in the removal, and although it is true that this is an occupational hazard common to many walks of life, we think, nevertheless, that some regard should be paid to it in our total appreciation of the policeman's life and work.

45. We have been asked to bear in mind that it is highly undesirable that a constable should supplement his pay by undertaking remunerative employment in his spare time. This can bear hardly on the policeman whose neighbours, often industrial workers sharing in the country's present prosperity, take on a variety of jobs from painting houses to repairing motor cars. We understand that in recent years some chief constables have felt obliged to relax the rule to the extent of occasionally granting permission for men to take on outside work unconnected with police duties. But we share the general view of the police witnesses that this practice is open to strong objection and we would expect our recommendations to lead to a situation in which it becomes unnecessary for a constable to seek means of supplementing his pay.

46. It is necessary also to mention in this context the police discipline code. We accept that, in a body of men whose standards must be in every respect exemplary, discipline must be rigorous; and we have noted the very detailed nature of the code and the number and variety of offences it is possible for a policeman to commit."

Para. 51 considered the increase in police duties and responsibilities over the years. These paragraphs i.e. 51 and 52 provide:

"51. We have considered to what extent the policeman's duties and responsibilities have changed since the war. The Desborough Committee said in 1919:

"We are satisfied that a policeman has responsibilities and obligations which are peculiar to his calling and distinguish him from other public servants and municipal employees and we consider the police entitled thereby to special consideration in regard to their rate of pay and pensions."

The Oaksey Committee, reporting in 1949, endorsed these views and added:

'We are convinced that police responsibilities are more exacting now than they were when the Desborough Committee reported in 1919 and are not likely to become less; and we have had this at the forefront of our minds in all our inquiries into police emoluments.'

52. Our conclusion is that police duties and responsibilities, although essentially unchanged, have unquestionably increased in their range and variety during the past two decades and that they are now exercised in increasingly difficult circumstances. Our reasons for this view are as follows."

The reasons given by the Commission for the above views were the increase in crime, the increase in road traffic, the vast expansion in the amount of legislation which the police officer must familiarize himself with, and the climate of public opinion today.

By the authority of The Police Act, 1964 (U.K.) the Police Regulations 1965, S.I. 1965/538 were made. Section 4 of those regulations provided for restrictions on the private life of members of the police force as were contained in Schedule 1 to the Regulations. Schedule 1 of those regulations provide:

> "1. A member of a police force shall at all times abstain from any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression amongst members of the public that it may so interfere; and in particular a member of a police force shall not take any active part in politics.
>
> 2. A member of a police force shall not reside at premises which are not for the time being approved by the chief officer of police.
>
> 3. – (1) A member of a police force shall not, without the previous consent of the chief officer of police, receive a lodger in a house or quarters with which he is provided by the police authority or sub-let any part of the house or quarters.
>
> (2) A member of a police force shall not, unless he has previously given written notice to the chief officer of police, receive a lodger in a house in which he resides and in respect of which he receives a rent allowance or sub-let any part of such a house.
>
> 4. A member of a police force shall not wilfully refuse or neglect to discharge any lawful debt."

Section 5 of the Regulations contains further limitations upon the business interest which a member of the police force or his spouse may enter into.

There would seem to be no reason why the passages quoted from the above mentioned reports are any less applicable in Canada than they are in the United Kingdom.

It might be helpful to look at the situation in Ontario with relation to the standard of conduct expected of Ontario Provincial Police officers. Ontario Regulation 451/69 made by the Lieutenant Governor in Council pursuant to the authority conferred by s. 62 of The Police Act, R.S.O. 1960, c. 298, as amended, contains a code of discipline offences in a schedule thereto which apply to the Ontario Provincial Police by virtue of s. 39 of that regulation. It is not necessary to quote the code in its entirety but it is interesting to note that the majority of its provisions relate to the proper conduct of a police officer in regard to relations with other members of the force and in regard to his actions while on duty. There are some provisions which govern an officer's conduct in his private life but none of these are framed in language similar to that found in item 1 of schedule 1 of the United Kingdom Police Regulations above quoted. The closest provision states:

> "1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

i. DISCREDITABLE CONDUCT, that is to say, if he,

(a) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force;"

Although this provision may partially provide for the situation covered by the United Kingdom Police Regulations I think there is sufficient doubt to justify a clearer statement of policy than that which is provided for therein.

It is also interesting to look at the codes of ethics as adopted by various police associations. One such association is the International Association of Chiefs of Police, Inc. whose law enforcement code of ethics provide:

> "AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.
>
> I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
>
> I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favour, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
>
> I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement."

From the above it is readily apparent that it has been recognized for years that the police officer must maintain a high standard of conduct in his private as well as public life. However, there is the other side of the coin which must not be overlooked, that is, the obligation which the public owe to the members of the police force. In the last few years we have seen an ever widening gap between certain specific groups of our society, on the one hand, and the police on the other. It would be unfair to suggest that this gap results solely from the conduct of the police. As the police owe the public certain duties and responsibilities so does the public owe the

police respect and encouragement so that the latter may more capably perform its duties to the former. This was expressed in the final report of the Royal Commission on the Police in 1962 at para. 326 as follows:

> "326. It is not because the subject lacks importance that we have deferred our comments on the relationship between the police and the public to this stage of our report. On the contrary, the importance of this relationship has been present to our minds throughout the course of our inquiry, and it has influenced all our recommendations. It is no exaggeration to say that the police cannot successfully carry out their task of maintaining law and order without the support and confidence of the people. The police and the community are one. The police act for the community in the enforcement of the law and it is on the law and on its enforcement that the liberties of the community rest. In the next chapter we are at pains to ensure that there are adequate safeguards against arbitrary action by the police which might unjustly interfere with the liberties of individuals. It is equally essential that the police should have full and complete popular support in their principal task of ensuring that public liberties are not put in peril by lawbreakers of any kind."

Again at para. 361 of the Report it is stated:

> "361. The finding of the Social Survey, based on the views of both the police and the public, that the public do not help the police enough, poses an intractable problem. The importance of adequate public co-operation with the police cannot in our view be over-estimated. We entirely endorse the following remarks of the Chief Constables:
>
> 'The successful maintenance of law and order depends as much upon the existence of police confidence in public support as the public trust in the police. The task of the policeman today is more difficult and complex than ever before and provided he acts reasonably and conscientiously he is entitled to expect the full support of the public and the courts. Unfair criticism carried too far and a failure to understand the difficulties that daily beset the police must in the long run cause even the most loyal and conscientious officer to lose confidence in himself and interest in his duties. It is, therefore, vital for both the public and the police that a mutual regard each for the other should be reaffirmed and maintained.' "

The respect and dedication between the police and the public must therefore be mutual in order for the police to properly and efficiently fulfil their obligation to the public.

EDUCATION TO LEAD TO SENIOR POSITIONS IN OUR POLICE FORCE

All recruits to the Ontario Provincial Police Force receive preliminary training which is most helpful to those embarking on such career. However under our present system of law enforcement certain branches of the police force are called on to participate in areas which require the advantage of higher education and more complete training than that now given. Some aspects of police work are becoming more complicated and can only be entrusted to those with peculiar knowledge of the subject. In these cases they must be specially trained to deal with the intricacies involved.

As in any business or profession there are those within the police force who by means of their ability and ambition eventually are entrusted with a leading role. This may be either in the administrative branch or in the field of investigation and presentation before a court or tribunal. As members of the legal profession tend to specialize in their work and study so police officers must be qualified as well to understand fully the subject which is the object of their investigation or prosecution. They must be possessed of sufficient resources to efficiently perform the functions delegated to them. Although an alert police officer will develop and learn much from his work and experience this is not always in itself sufficient. While academic training is helpful proper policing is only learned by the experience gained from doing it. Advanced academic training with experience will provide the most efficient recruits for future command positions. The force must attract to its ranks persons of ability who are or will become capable of assuming leadership and important positions requiring advanced learning. Few persons take a university education and then seek admission to the constabulary. Those who join the force and thereafter choose to obtain better education cannot afford to take leave from their work for that purpose. It follows that greater means of education should be established within the police department and that the same be made available to younger men of the force. The Ontario Provincial Police Force has within its ranks many young married police personnel who

would make excellent senior officers or specialists in a particular field of work if they could afford to take the necessary time for such education. When suitable recruits indicate a willingness to take advantage thereof it could be arranged that a portion of their year might be devoted to such study permitting them to perform their regular duties for the balance of the time.

Such training should encompass proper attitudes and means of handling and meeting the various ethical dilemmas that may be faced by an officer from time to time. There must be many areas of police work that could benefit greatly by such a form of education.

The philosopher Alfred Norris Whitehead stated:

> "There can be no adequate technical education which is not liberal, and no liberal education which is not technical; that is, no education which does not impart both technique and intellectual vision. In simpler language, education should turn out the pupil with something he knows well and something he can do well. This intimate union of practice and theory aids both."

In California state law requires that police ethics be taught and that the code be administered as an oath to all police recruits training in the forty five police academies certified by the State Commission on Police Officers Standards. In 1955 the International Conference of Police Associations developed a lesson plan for the teaching of ethics within police organizations. The California Police Officers Association and the Police Officers Research Association maintain highly active committees on police standards and ethics and are responsible for most of the high ethical standards established throughout that State.

A large number of New York policemen are engaged in university study either part time or full time and many go on to a complete degree. In England there has been developed in recent years a special school for the training of police officers. This provides courses on a variety of subjects including crime detection and prevention, photography, fingerprints, lifesaving, first aid, scenes of crime searching and other fields of study which may be associated with a police officer's work. Such teaching is not entirely new but it has been vastly developed in recent years. It ensures a higher knowledge of police practice by personnel skilled in specialized work. Higher training is provided at the National Police College at Bramshill House, Hartley Whitney, Hampshire, England, to selected sergeants and higher ranks. Its purpose is to raise standards in middle and higher officers of the constabulary. Admittance to such college is now more restrictive but the quality and extent of the training is directed to promotion and greater responsibility. The courses are meant to train more promising young officers for higher command. A further course for more senior officers provides advanced training aimed to solve problems at the higher levels of police command. From its graduates the chief officers

of the future will be drawn. Selection for this course is careful to admit only those giving promise of ability to fill senior offices. This is a means whereby men of high potential are provided to be available as needed.

Such a form of higher education for police officers in this province would be a means of attracting efficient and able leaders to the Ontario Provincial Police Force and ensure preservation of an outstanding and efficient group of senior officers. As the benefit from a good police force enures to the benefit of the public, money directed by the province to such an endeavour would be well spent.

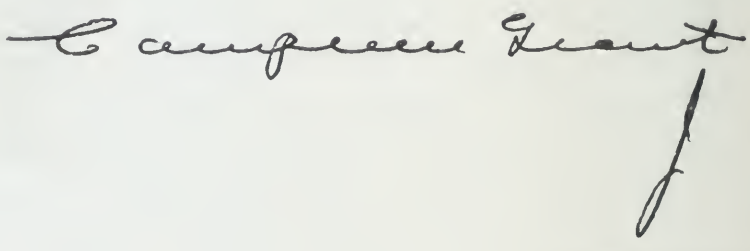
I make these suggestions because I believe there is great need for attracting young men of character and ability to the force. Provision for higher education and advancement with adequate salaries and sound retirement systems should be means of attracting such persons to this most important branch of law enforcement.

CONCLUSIONS

Having inquired into the matters referred to me by such Commission, I hereby report that I have found no evidence of any improper relationship between any personnel of the Ontario Provincial Police force and any person or persons of known criminal activity. I further report that I have not found any evidence of such improper relationship as was alleged by the Member of the Legislature for High Park in his speech of June 4th, 1970, between personnel of the Ontario Provincial Police force and George Clinton Duke, Daniel Gasbarrini, John Papalia, Donald Le Barre, or any of them.

I wish to express my appreciation of the most capable manner in which Commission counsel have prepared and presented the evidence. All other counsel appearing before me as well have been of very considerable assistance. The complete and impartial investigation made by Staff Sergeant J. S. Kay and Chief Inspector W. Lidstone satisfies me that all relevant facts have been presented at the hearing.

Mr. Robert B. MacLellan, Law Clerk, assisted materially in the preparation of the chapter entitled, "Standard of Conduct Expected of Police Officers in Their Private Lives." Mrs. Norma Pullen has been most helpful in the production of the report.



December, 1970

Commissioner

APPENDIX A

STAFF OF COMMISSION

John J. Robinette, Q.C.	Commission Counsel
Marvin A. Catzman	Assistant Commission Counsel
Robert B. MacLellan	Law Clerk
Norma Pullen	Commission Secretary
Staff Sergeant J. S. Kay (O.P.P.)	
Chief Inspector William Lidstone (O.P.P.)	

APPEARANCES

John T. Weir, Q.C. and M. J. McQuaid	Counsel for Ontario Provincial Police
H. R. Daiter	Counsel for George C. Duke
J. F. Howard, Q.C.	Counsel for the Hamilton Spectator and Gerald Francis X. J. McAuliffe
John D. Bowlby,Q.C.	Counsel for the Burlington Police Department
G. W. Howell, Q.C.	Counsel for Mrs. Elizabeth M. Citron
Joseph Dubeck	Counsel for Mrs. Bonnie Duke
John Sopinka	Counsel for Dante G. Gasbarrini
W. J. Estey, Q.C.	Counsel for Ontario Provincial Police Association
Kenneth A. Langdon	Counsel for Provincial Judge Langdon
W. J. Smith, Q.C.	Counsel for Staff Superintendent Archibald M. Rodger
John White, Q.C.	Counsel for Superintendent Albert Wilson
N. D. McRae	Counsel for Donald Le Barre
John J. O'Driscoll	Counsel for John Papalia
James Renwick	Counsel for Dr. Morton Shulman.

APPENDIX B

HEARINGS

Public hearings were held at the Old City Hall, Toronto, from September 14th to October 13th, 1970.

APPENDIX C

Witnesses called are listed below:

Kenneth Marney Langdon
Elizabeth Margaret Citron
Rosaleen Elizabeth Citron
Jeffrey Samuel Citron
Murray Eaton
William Ernest Daniels
William John Smith
Clare Douglas Richardson
Robert Alferink
George William Green
Ernest Robert Hennessey
Douglas Victor Latimer
John Robert Phillips
Leo Joseph Slattery
Margaret Eleanor Slattery
Vernon Clarence Welsh
Jack Milton Jeffries
Gerald Francis X. J. McAuliffe
Richard Duke
Bonnie Duke
John Frank Foley
John Barrie Doherty
Donald Bell
Caroline Ann Bell
Sharon Bernadette Nolan Dredge
Jack Stewart Kay
Albert Lewis Haughton
John Richardson
Alexander Fairfull Wynne
Donald Howard Hewitt
Roy Roberts
James McConnell
Morley Edward Leeking
Joseph Henry Jones
Ronald Cameron Bond
Wayne Alan Skelley
Arthur Neil Chaddock
Francis Crawford Harvey
Douglas Lawrence Hillman
John Louis Roloson
Robert George Barclay
Thomas Howe Trimble
Sidney Wilfred Bartlett
Denis Ritchie
John Wright McCormack
Roy Warren Rawlings
Roland Hugh Devereux
Leonard Neil
Ward Hewitt Kennedy
Louis James Bolt
Harry Phillip Boyd
Frederick Robert Thomas Blucher
John Watson Harding
Richard Mackie
Patricia Ann Pose
Garry Kroes

William Thomas Ward
William John Watkinson
John Lee Chamberlain
Albert Hatfield Bird
John Lewis Needham
Harold Hopkins Graham
Eckbert Walter Miller
Dennis Vernon Whiteley
Eric Hamilton Silk
Robert McKie
John William McPherson
William George Murray
John Whitty
Gordon Robson Craddock
Vida Arabelle Montgomery
James Grant Montgomery
Charles Gordon Wilkinson
Kenneth James Pattinson
Raymond Neil Archer
Leonard George Lawrence
Archibald Morrison Rodger
Edward Heath
Dante Gabriel Gasbarrini
Donald Le Barre
George DePalmo
William Clare Joyce
Marion Phillips
Edward Weusten
John Joseph Papalia
Kenneth Edward Brooks
Nelson Sherwood
Rod Taylor
William Lidstone
Brian William McLoughlin
Kenneth William Grice
George Clinton Duke
Thomas Heurter
Jack Carlyle Beemer
Michael Granville Valpy
Rose Caroline Paikin
Dr. Morton Shulman
Phillip John Gibson
Beverley Ann Jones
Ronald Dennis
Frederick William Oliver
John Playford Strimas
Albert Wilson
Roy Albert Wilson

APPENDIX D

LIST OF EXHIBITS

No.

1 Legislature of Ontario Debates. The Standing Committee on Supply, numbered S. 16, S. 17, S. 31, S. 33, S. 34, S. 35 and S. 36.

2 15 organizational charts of the Ontario Provincial Police.

3 Transcript of evidence at the Burlington Provincial Court before His Honour Judge K. M. Langdon, dated October 31st, 1969.

4 Transcript of evidence in proceedings before His Honour Judge K. M. Langdon, dated November 21st, 1969.

5 Photostatic copy of transcript of evidence before His Honour Judge K. M. Langdon, dated the 17th day of December, 1969.

6 Information of Elizabeth Citron, dated the 1st day of September, 1969.

7 Directive addressed, "TO: Magistrates, Crown Attorneys and Juvenile and Family Court Judges" from A. R. Dick, dated February 17th, 1967.

8 Firearms Registration Certificate dated 29th November, 1967.

9 Statement of Mrs. Elizabeth Citron in her own handwriting turned over to Sergeant Richardson on October 28th, 1969, together with typewritten copy.

10 Photostatic copy of handwritten letter dated 5th January, 1970, addressed to the Minister of Justice and Attorney General from Elizabeth M. Citron, with attached typewritten copy.

11 Letter addressed to Mrs. Elizabeth M. Citron from A. A. Wishart, Minister of Justice and Attorney General, dated February 10th, 1970.

12 Photostatic copy of Hamilton Spectator article under the byline of "Gerry McAuliffe", dated December 20th, 1969.

13 Occurrence Report dated October 13th, 1969.

14 Recognizance to keep the Peace signed by Mr. Duke.

15 Photographic copy of sheet headed, "Confidential Instructions for Crown Attorney", dated September 1st, 1969.

No.

16 Photostatic copy of report dated 22nd December, 1969, to Chief K. Skerrett, Burlington Police Department from Sergeant C. D. Richardson.

17 Sketch drawn by P.C. W. G. Green.

18 Purchase agreement of J. Holland Motors Ltd.

19 Photostatic copy of letter dated December 24th, 1969, from D. V. Latimer to Sergeant A. L. Haughton.

20 Letter of confirmation to John Robert Phillips from Lucas & King Travel Agency.

21 Statement of Staff Superintendent A. M. Rodger with respect to his involvement with George Clinton Duke.

22 Aerial photograph of Duke property.

23 Photograph of plant and office of Duke Lawn Equipment Limited.

24 Bundle of hotel accounts, vouchers, reservations in Montreal in 1967.

25 Private investigator's report.

26 Summary of information re George Clinton Duke from the files of the Central Records and Communications Branch of the Ontario Provincial Police.

27 Record of John Papalia from the Central Records Branch of the Ontario Provincial Police.

28 Record of Donald Earl Le Barre from the Central Records of the Ontario Provincial Police.

29 Record of Daniel Gasbarrini from the Central Records of the Ontario Provincial Police.

30 Document headed, "Ontario Provincial Police, Permit to Convey Firearm, George Clinton Duke".

31 Card in respect of Superintendent Rodger.

32 Card in respect of Superintendent Wilson.

33 Card in respect of Inspector Wilkinson.

34 Card in respect of Assistant Commissioner Whitty.

35 Statement of Chief Inspector R. Pettigrew dated July 21st, 1970.

36 Copy of file in Weapons Section, O.P.P., re George Clinton Duke.

37 Copies of cards in Weapons Branch, O.P.P., showing registration of guns in name of George Clinton Duke.

38 Photocopy of cheque dated September 23rd, 1969, in the amount of $116.56, to the order of Lockington Sports Limited, signed by John Richardson.

39 Card in respect of Assistant Commissioner Neil.

40 Uniform traffic ticket No. 856817.

41 Sample copy of Uniform traffic ticket.

No.

42 Copy of uniform traffic ticket headed "Police Record".

43 Photostatic copy of police record of court disposition.

44 Certified copy of Court docket for Monday, June 8th, 1968.

45 Certified copy of Court docket for June 18th, 1968.

46 Ontario Provincial Police diary for the year 1968.

47 Detachment record book.

48 Copy of O.P.P. application to register firearm by Pauline Robbie.

49 Group of applications to register firearms by George Clinton Duke.

50 Photostatic copy of police record, immediate return.

51 Photostatic copy of Central Records, Court disposition.

52 Cheque from Const. J. L. Roloson to Duke Lawn Equipment for $918.54.

53 Cheque from Const. R. Barclay to Duke Lawn Equipment Limited for $751.97.

54 Minutes of Senior Staff Meeting of August 29th, 1968.

55 Summary of lawnmower purchases from Duke Lawn Equipment Limited through G.H.Q., O.P.P.

56 File containing details of purchases summarized in Ex. 55.

57 Summary of purchases by districts from Duke Lawn Equipment Limited.

58 File containing details of purchases summarized in Ex. 57.

59 Summary of purchases at district level from other than Duke Lawn Equipment Limited.

60 Summary of purchases made by Department of Public Works from Duke Lawn Equipment Limited.

61 Summary of purchases of equipment made by Ontario Department of Highways from Duke Lawn Equipment Limited.

62 Schedule of total payments to Duke Lawn Equipment Limited by Ontario Department of Highways (both equipment and parts).

63 Insert listing donors to Ontario Association of Chiefs of Police Conference.

64 Duke Lawn Equipment Limited invoice for O.A.C.P.

65 Handwritten notes of J. W. Harding of Senior Staff meeting.

66 Computer printout showing convictions and traffic collision reports against George Clinton Duke, 1966-1970.

67 Copies of notices of conviction and traffic collision reports referred to in Ex. 66.

68 U.T.T. 973562 – Immediate Return and Disposition.

69 Motor vehicle accident report of O.P.P. Const. J. L. Chamberlain.

70 Mrs. Duke's handwritten list of visitors to apartment in Freeport (from memory).

No.

71 Breakdown of total purchases of lawnmowers, equipment and supplies by O.P.P. from Duke Lawn Equipment Limited and from other suppliers.

72 Breakdown of purchases by O.P.P. from Duke Lawn Equipment Limited by districts.

73 Breakdown of purchases of lawn equipment from suppliers other than Duke Lawn Equipment Limited by districts.

74 O.P.P. tie pin.

75 List of cuff links and tie bar sets prepared by Chief Inspector Murray.

76 Statements of Supt. Wilson given to Staff Supt. Welsh.

77 Report from Det. Taylor to Chief Oliver, Oakville P.D., relating to incidents in June and July, 1967.

78 File of Archer Investigator Company on movements and activities of George Clinton Duke.

79 Editorial in Oakville Daily Journal-Record showing Duke record.

80 Warrant to search and copies of long distance telephone tolls for telephone number 827-2516 from Jan. 19th, 1969 to March 19th, 1969.

81 Copy of lease between Terrace Creek Developments Limited and "Mrs. Johnson" and covering letter from Terrace Creek Developments Limited.

82 Show cause order in deportation proceedings against Dante Gabriel Gasbarrini.

83 Invoice of Tippet-Richardson Limited to G. DePalmo.

84 Photograph of Marion Phillips.

85 Complaint report of complaint by Mrs. Duke as made by Det. Taylor, Oakville P.O.

86 Warrant to search and copies of long distance telephone tolls for telephone number 827-2516 from March 21st, 1969 to May 18th, 1969.

87 Statement of Ernest Disley Taylor taken by Chief Inspector Lidstone.

88 Statement of Mrs. Joy Drew as recorded by Chief Inspector Lidstone.

89 Statement of George DePalmo as recorded by Staff Supt. Kay.

90 Statement of John Papalia as recorded by Staff Supt. Kay.

91 Radio log of O.P.P. Communications Branch for Burlington detachment showing call at 4.26 p.m. asking Staff Sergeant Jones to wait until car 330 arrives.

92 Report of Brian McLoughlin (Touche, Ross & Co.) of investigation of financial affairs of Duke Lawn Equipment Limited and Power Turf Equipment Limited.

93 Photograph of Duke and customer showing automatic rifle mounted on golf cart.

94 Article from Spectator, March 26th, 1970.

The Honourable Mr. Justice Campbell Grant

Appointed to the Supreme Court of Ontario May 12, 1962. Before his appointment to the Bench, Mr. Justice Grant practised General Law in Walkerton where he now resides. This is the third Inquiry he has conducted for the Government of Ontario.

August, 1965—Mr. Justice Grant's report of his Inquiry into The Farmers' Allied Meat Enterprises Co-ops Limited.

September, 1968—The report of his Inquiry re Magistrate Frederick J. Bannon and Magistrate George W. Gardhouse.

December, 1970—Inquiry re Ontario Provincial Police